



General Court annuls revocation of MOOD MEDIA mark

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- The Board of Appeal found that Mood Media had not proved that it had made genuine use of the MOOD MEDIA mark for the goods/services concerned
- The court disagreed, finding that the addition of a colon and of a figurative element did not alter the distinctive character of the mark as registered
- The board had thus erred in excluding certain items of evidence when analysing whether use of the mark was genuine

In [*Mood Media Netherlands v European Union Intellectual Property Office*](#) (Case T-615/20), the General Court has held that the Board of Appeal of the EUIPO was wrong in finding that there had been no genuine use of Mood Media Netherlands' MOOD MEDIA trademark. The General Court accepted Mood Media's plea with regard to the assessment of the proof of use of variations of the mark.

Background

On 14 July 2008 the word sign MOOD MEDIA was registered by Mood Media in:

- Class 9 for "apparatus and media for recording and reproduction of sound or images";
- Class 35 for "advertising by the distribution of recorded messages and/or images, advertising management";
- Class 38 for "transmission and distribution of images, sound and messages via radio, television, the Internet and satellite";
- Class 41 for "music and radio entertainment and television and video entertainment, production of films, rental of films, sound recordings and equipment for recording and broadcasting of sound and images"; and
- Class 42 for "consultancy relating to the fitting out of areas and the technical fitting out and design of such areas for the projection of video and audio cassettes, compact discs, CD-ROMs and DVDs; production, updating and maintenance of software for the transmission and broadcasting of images, sound and messages via the Internet, for the encryption of data for the production of multimedia products".

In June 2017 Tailoradio Srl filed an application for revocation of the MOOD MEDIA trademark, claiming that the mark had not, within a continuous period of five years, been put to genuine use in the European Union.

The application for revocation was rejected by the Cancellation Division of the EUIPO. This decision was then annulled by the Board of Appeal, on the ground (among others) that some of the evidence of the genuine use of the trademark was in a form which differed from the registered mark in such a way that the distinctive character of the mark had been altered.

This led to an appeal before the General Court by Mood Media, which invoked one plea in law, divided into three parts. Most importantly, Mood Media claimed that the Board of Appeal had erred in excluding evidence showing use of the mark in slightly modified forms.

General Court decision

The General Court took into consideration the use of the contested mark in the following three forms:



It decided that the Board of Appeal, for some of the above uses of the mark, should have examined the evidence when assessing whether there had been genuine use. The two signs containing 'mood media' did not alter the distinctive character of the mark. This was despite the fact that, in one sign, a red colon was added and, in the other, a figurative element was added. The overall impression created by the sign in the mind of the relevant public was not altered. The court nevertheless decided that, for most of the evidence submitted by Mood Media in relation to the MOOD: sign (above on the right), the distinctive character of the mark *did* get altered by the omission of the term 'media'.

The court thus came to the conclusion that the board's decision must be annulled.

Comment

It is a welcome decision that use of a trademark with very slight modifications can still amount to as genuine use. Trademark proprietor would otherwise be very restricted in their trademark use and commercial communications.

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