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General Court partially annuls Board of Appeal's decision in 3D champagne trademark case

European Union - [Hoogenraad & Haak, Advertising + IP Advocaten](#)

- Ace of Spades opposed the registration of the 3D sign JC JEAN CALL CHAMPAGNE ROSÉ in Class 33 based on earlier 3D and position marks for its champagne
- The Board of Appeal found that the conflicting signs were dissimilar and, therefore, there was no likelihood of confusion
- The General Court held that the board had erred in ruling out the existence of a likelihood of confusion without carrying out a global assessment

In [Ace of Spades Holdings LLC v European Union Intellectual Property Office](#) (EUIPO) (Case T-620/19), the General Court has partially annulled the decision of the Fifth Board of Appeal of the EUIPO. The General Court corrected the Board of Appeal's faulty assessment of the likelihood of confusion between the earlier trademarks and the sign at issue. The General Court also reiterated that, when the conflicting signs are at least visually similar, a global assessment of the likelihood of confusion must take place, taking into account all relevant factors.

Background

Krupp and Borrmann sought to register the three-dimensional (3D) sign JC JEAN CALL CHAMPAGNE ROSÉ (depicted below) in Class 33 for champagne, for which the colours rose and black were claimed:



Ace of Spades filed an opposition based on four earlier EU 3D trademarks and one earlier EU position trademark for its Armand de Brignac champagne (colloquially known as 'Ace of Spades' after its logo).



All of the earlier trademarks are registered for (sparkling wines and) champagne in Class 33.

The opposition was entirely rejected by the Opposition Division, as there was no likelihood of confusion between the earlier trademarks and the sign applied for. The appeal against this decision was unsuccessful, with the Board of Appeal agreeing that there was no similarity between the conflicting signs. It further concluded that the reputation of the earlier trademarks had not been established, thus also dismissing the opposition under Article 8(5) of [Regulation 207/2009](#).

This led to an appeal before the General Court. Ace of Spades invoked two pleas in law:

- the Board of Appeal had erred in concluding that there was no likelihood of confusion between the signs under Article 8(1)(b) of the regulation; and
- the board had infringed Article 8(5) of the regulation by not taking into account the evidence of use that Ace of Spades provided to substantiate the reputation of the earlier trademarks.

General Court decision

The General Court upheld Ace of Spades' first plea. The court decided that the Board of Appeal had wrongfully ruled out the existence of a likelihood of confusion by finding that the earlier trademarks No 1 to 4 and the sign applied for were visually dissimilar (and, consequently, phonetically and conceptually dissimilar) and that they were overall dissimilar. This led to the conclusion that one of the conditions laid down in Article 8(1)(b) was not met. In contrast, the General Court found that the signs were at least visually similar and, therefore, the Board of Appeal should have performed a global assessment of the likelihood of confusion, taking into consideration all relevant factors (see the decision of the Court of Justice of the European Union in [EUIPO v Equivalenza Manufactory](#) (Case C-328/18 P)).

Ace of Spades' second plea was rejected, as the General Court found that there was no infringement of Article 8(5) of the regulation. The many arguments and documents submitted by Ace of Spades did not convince the General Court that the earlier trademarks had a reputation in the European Union. Consequently, the Board of Appeal's decision was upheld on this point.

In light of the above, the General Court annulled the board's decision insofar as it dismissed Ace of Spades' appeal based on Article 8(1)(b) and rejected the opposition on that ground. The action was dismissed as to the remainder.

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