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## General Court: Board of Appeal erred in assessing relevant public's level of attention for financial services

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

- CFA Institute opposed the registration of the mark CCA in Classes 35 and 41 based on earlier CFA marks in Classes 16, 41 and 42
- The court found that the board had erred in taking into account an average, rather than high, level of attention for the services in Class 35
- This error vitiated the whole of the board's assessment of the possible likelihood of confusion

In [Global Chartered Controller Institute v European Union Intellectual Property Office](#) (EUIPO) (Case T-266/20), the General Court has annulled the decision of the Fifth Board of Appeal of the EUIPO, correcting the board's faulty assessment of the level of attention of the relevant public.

### Background

Global Chartered Controller Institute sought to register the figurative sign CCA CHARTERED CONTROLLER ANALYST CERTIFICATE (depicted below) for "advertising; business management; business administration; office functions" in Class 35 and "education; providing of training; entertainment; sporting and cultural activities" in Class 41:



CFA Institute filed an opposition based on:

- the earlier EU word mark CFA, covering "printed publications in the field of financial analysis and in support of the interests of financial analysts" in Class 16, "educational services, namely arranging, conducting and providing courses of instruction, workshops, seminars, and conferences in the field of financial analysis and distributing course materials in connection therewith" in Class 41 and "association services, namely promoting the interests of financial analysts" in Class 42; and
- the earlier EU figurative trademark (depicted below), covering "association services, namely the promotion of education, professional responsibility, ethics and integrity of financial analysts" in Class 42:



The opposition was entirely rejected by the Opposition Division of the EUIPO, as there was no likelihood of confusion between the earlier trademarks and the sign applied for. The appeal was upheld in part by the Board of Appeal.

This led to an appeal before the General Court. The applicant invoked two pleas in law, the first of which was based on four complaints seeking to establish that the Board of Appeal had erred:

- in the definition of the relevant public and its level of attention;
- in the comparison of the signs at issue;
- in the assessment of the enhanced distinctiveness of the earlier marks in Germany; and
- in the overall assessment of the likelihood of confusion between the marks at issue.

The second plea was not addressed by the General Court in the decision.

### General Court decision

The General Court upheld the first complaint in the first plea, finding that the Board of Appeal had erred in concluding that it was appropriate to take into account an average, rather than high, level of attention for the services in Class 35 covered by the mark applied for. The court found that the Board of Appeal was right to conclude that the services covered by the earlier marks were aimed at both professionals and consumers. However, as consumers do not make use of financial training services on a daily basis, their level of attentiveness could not be equivalent to that displayed in respect of everyday consumer services. Therefore, the level of attention in relation to the services covered by the earlier marks was high.

The General Court concluded that this error vitiated the whole of the Board of Appeal's assessment of the possible likelihood of confusion between the marks at issue. Although it could not, *a priori*, be ruled out, even for a public displaying a high level of attentiveness, that such a likelihood of confusion might exist where the marks and services at issue are identical or similar, the fact remained that that assessment must be based on the actual perception of those marks and services by the relevant public.

The court thus came to the conclusion that the board's decision must be annulled, without it being necessary to examine the other complaints relied on by the applicant.

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