



PRESS RELEASE No 71/24

Luxembourg, 24 April 2024

Judgment of the General Court in Case T-157/23 | Kneipp v EUIPO – Patou (Joyful by nature)

EU trade marks: the General Court confirms that the reputation of a trade mark is acquired and, in general, lost progressively

In November 2019, Kneipp GmbH (Kneipp), a German cosmetics company, applied to European Union Intellectual Property Office (EUIPO) to register the word sign Joyful by nature as an EU trade mark. The mark applied for designated mainly cosmetics, perfumed candles and marketing services. In July 2020, Maison Jean Patou, a French luxury goods company (fashion and fragrances mainly), filed a notice of opposition to registration of the mark applied for. EUIPO upheld the opposition in part, finding that the trade mark JOY had a strong reputation in a substantial part of the European Union, of which the proprietor of the mark applied for could take unfair advantage in the light of the similarity between the two marks.

Kneipp brought an action before the General Court of the European Union against EUIPO's decision.

The General Court **dismisses that action**.

The Court finds that the trade mark JOY **has a reputation** in a substantial part of the territory of the European Union, in particular in France, so far as concerns perfumery and fragrances. That mark acquired a high degree of reputation in the past, which, even if it were to be assumed that it may have diminished over the years, still survived at the date of filing the application for registration of the mark applied for; accordingly, a certain “surviving” reputation remained at that date. Moreover, the Court rules on the burden of proof in relation to reputation, recalling that a document drawn up some time before or after the filing date of the application for registration of the mark at issue may contain useful information in view of the fact that the reputation of a trade mark is, in general, acquired progressively. It states that the same reasoning applies to the loss of such a reputation, which is also, in general, lost gradually. Therefore, in the absence of concrete evidence showing that the reputation progressively acquired by the earlier mark over many years had suddenly disappeared during the last year under examination, the trade mark JOY still had a reputation on the relevant date.

The Court also confirms that the earlier mark has a distinctive character allowing it to be registered, that it is similar to the mark applied for and that the existence of a likelihood of association between both marks cannot be ruled out. In those circumstances, there is a risk that the proprietor of the mark applied for may **take unfair advantage** of the reputation of the earlier mark.

NOTE: EU trade marks and designs are valid in throughout the territory of the European Union. EU marks coexist with national marks. EU designs coexist with national designs. Applications for registration of EU trade marks and designs are addressed to the EUIPO. Actions against its decisions may be brought before the General Court.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act

is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision. The appeal will not proceed unless the Court first decides that it should be allowed to do so. Accordingly, it must be accompanied by a request that the appeal be allowed to proceed, setting out the issue(s) raised by the appeal that is/are significant with respect to the unity, consistency or development of EU law.

Unofficial document for media use, not binding on the General Court.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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