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Judgment of the General Court in Case T-2/21 | Emmentaler Switzerland v EUIPO (EMMENTALER)

The term ‘emmentaler’ cannot be protected as a European Union trade mark for cheeses

Emmentaler Switzerland obtained, from the International Bureau of the World Intellectual Property Organisation (WIPO), the international registration of the word sign EMMENTALER for goods corresponding to the description ‘Cheeses with the protected designation of origin “emmentaler”’.¹

That international registration was notified to the European Union Intellectual Property Office (EUIPO), but the examiner rejected the application for registration.² Emmentaler Switzerland therefore lodged an appeal, which was subsequently dismissed by the Second Board of Appeal of EUIPO, on the ground that the mark applied for was descriptive.³

By its judgment, the General Court rejects the action brought by the applicant against the Board of Appeal’s decision. In this case, it examines whether the Board of Appeal infringed Article 7(1)(c) of Regulation 2017/1001 by finding that the mark applied for is descriptive. In addition, it clarifies the link between Article 74(2) of that regulation, concerning signs or indications which may constitute EU collective marks, and Article 7(1)(c) of that regulation, concerning descriptive marks.

Findings of the General Court

First, as regards the descriptive nature of the mark applied for, the General Court considers that, in the light of the evidence taken into account by the Board of Appeal, the relevant German public immediately understands the EMMENTALER sign as designating a type of cheese. Given that, in order for the registration of a sign to be refused, it is sufficient that the sign have a descriptive character in part of the European Union, which may be a single Member State, the General Court holds that the Board of Appeal was entitled to conclude that the mark applied for is descriptive, without it being necessary to examine the elements which do not concern the perception of the relevant German public.

Secondly, as regards the protection of the mark applied for as a collective mark, the General Court notes that Article 74(2) of Regulation 2017/1001 provides that, by way of derogation from Article 7(1)(c) of that regulation, signs or indications which may serve, in trade, to designate the geographical origin of the goods or services in question may constitute EU collective marks. That derogation must however be interpreted strictly. Accordingly, the scope of

¹ Goods in Class 29 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

² On the basis of Article 7(1)(b) and (c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1), read in conjunction with Article 7(2) of that regulation.

³ Within the meaning of Article 7(1)(c) of Regulation 2017/1001.

that derogation cannot cover signs which are regarded as an indication of the kind, quality, quantity, intended purpose, value, time of production or other characteristic of the goods in question, but only signs which will be regarded as an indication of the geographical origin of those goods. Since the mark applied for is descriptive of a type of cheese for the relevant German public and is not perceived as an indication of the geographical origin of that cheese, the General Court concludes that it does not enjoy protection as a collective mark.

NOTE: EU trade marks and Community designs are valid throughout the territory of the European Union. EU trade marks co-exist with national trade marks. Community designs co-exist with national designs. Applications for registration of EU trade marks and Community designs are sent to 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 European Union 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.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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