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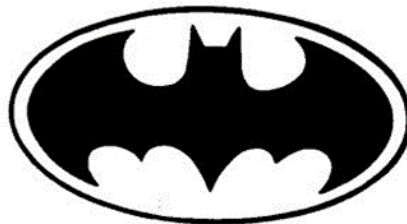
Luxembourg, 7 June 2023

Judgment of the General Court in Case T-735/21 | Aprile and Commerciale Italiana v EUIPO – DC Comics (Representation of a bat in an oval surround)

The Batman logo: the evidence submitted to the General Court is not sufficient to show that the EU trade mark representing a bat in an oval surround was devoid of distinctive character on the date of filing of the application for registration

For the relevant public, that distinctiveness makes it possible to associate, according to EUIPO, the goods covered by the trade mark with DC Comics and to distinguish them from those of other undertakings

On 1 April 1996, DC Comics, the publisher of Batman, filed an application with the European Union Intellectual Property Office (EUIPO) for registration of an EU trade mark for the following figurative sign:



That trade mark was registered on 2 February 1998.

In 2019, the company Commerciale Italiana Srl filed an application with EUIPO for a declaration of invalidity of that trade mark. The application, regarding certain classes of goods, such as clothing and carnival items, was rejected by EUIPO, first by its Cancellation Division then by its Board of Appeal: EUIPO considers that, in the evidence submitted to it, the Batman character was always associated with its publisher and that it had not been shown that consumers had associated that trade mark with another origin.

The company Commerciale Italiana and its single shareholder, Mr Luigi Aprile, ask the General Court of the European Union to annul the decision of EUIPO. They dispute, inter alia, that the trade mark is distinctive and argue that it is descriptive, both of which preclude registration of the trade mark and warrant, where appropriate, a declaration that it is invalid.

By today's judgment, the Court dismisses the action.

The Court finds that the decision of EUIPO contains sufficient reasons since it makes it possible for the company Commerciale Italiana and Mr Aprile to understand the Board of Appeal's reasoning, despite the Board of Appeal's reference to part of the Cancellation Division's findings.

As for the **distinctive character** of the trade mark, the Court recalls that distinctive character means that the trade mark serves to identify the goods in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish those goods from those of other undertakings. Further, in invalidity proceedings, as the registered trade mark is presumed to be valid, it is for the person who has filed the application for a declaration of invalidity to invoke before EUIPO the specific facts which call the validity of that trade mark into question. According to the Court, the mere fact that that trade mark is associated with a fictitious character, that is, Batman, does not, in itself, make it possible to rule out that that trade mark can also serve as an indication of the origin of the goods in question. Further, the Board of Appeal takes the view that the Batman character was always associated with DC Comics and that the evidence put forward by the company Commerciale Italiana and Mr Aprile is not sufficient to show that this was not the case on the date of filing of the application for registration or that, on that date, the trade mark was associated with another commercial origin. **EUIPO therefore correctly found that the contested mark was distinctive.**

Last, regarding the **allegedly descriptive character** of the trade mark, the Court rejects the argument made by the company Commerciale Italiana and by Mr Aprile that the trade mark describes one of the characteristics of the goods, on the ground that the Batman character cannot be depicted without that trade mark. According to the Court, the company Commerciale Italiana and Mr Aprile do not give sufficient reasons why the trade mark is capable of describing the characteristics of the Batman character and, a fortiori, those of the goods in question.

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.

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

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

Press contact: Jacques René Zammit @(+352) 4303 3355.

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