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Judgment of the General Court in Case T-426/23 | Chiquita Brands v EUIPO – Compagnie financière de participation (Representation of a blue and yellow oval)

The General Court confirms that Chiquita Brands's blue and yellow oval is not eligible for protection as an EU trade mark in respect of fresh fruits

Chiquita Brands (Florida, United States) obtained from the European Union Intellectual Property Office (EUIPO) registration as an EU trade mark for several foodstuffs, including fresh fruits, in respect of the following figurative sign:



In May 2020, Compagnie financière de participation (Marseilles, France) applied to EUIPO for a declaration that that mark was invalid. In its view, that mark was devoid of any distinctive character.

The trade mark was declared invalid in May 2023, but only in respect of fresh fruits, including bananas. EUIPO considered that the mark was devoid of any distinctive character for those goods and that Chiquita Brands had not established that it had acquired distinctive character through use, which would have prevented its cancellation.

Chiquita Brands challenges EUIPO's decision before the General Court of the European Union.

In its judgment, **the General Court dismisses the action and thus confirms the invalidity of the mark in respect of fresh fruits.**

The General Court considers that **neither the shape nor the blue and yellow colour scheme of the mark confers distinctive character on it.** The shape of the mark corresponds to that of a **simple geometric figure** (a variation of an oval), with no easily and instantly memorable characteristics. In addition, **oval labels are commonly used in the sector of bananas**, as they are easy to stick onto curved fruits. Consequently, **that shape will not be capable of attracting the attention of the public or enable it to identify the commercial origin of the fresh fruits designated by the mark.**

As regards the **colour scheme**, the General Court finds that it is a **combination of primary colours common in the fresh fruits business** and its use in the mark does not make it particularly characteristic or striking. Those colours are therefore **not capable of distinguishing those goods**.

According to the General Court, **Chiquita Brands did not succeed in demonstrating that its mark, as registered, had acquired, for the entire territory of the European Union, distinctive character through use** that would enable the commercial origin of the goods in question to be identified. First, most of the evidence submitted refers to only four Member States, and it has not been established that the situation in the fresh fruit market in those countries would have been the same in the other Member States. Secondly, in almost all the evidence, the mark appears with additional figurative or word elements, in particular the word 'chiquita'.

NOTE: EU trade marks and Community designs are valid for the entire territory of the European Union. EU trade marks coexist with national trade marks. Community designs coexist with national designs. Applications for registration of EU trade marks and Community designs are addressed 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 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 2 months and 10 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 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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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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