


## **Sports Brands: French Football Federation Wins Rooster Fight**

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The EU General Court has issued a decision on an appeal from a EUIPO Board of Appeal decision in opposition proceedings brought by the French Football Federation concerning two trade marks featuring stylised representations of a rooster.<sup>1</sup> While affirming EUIPO's finding of a likelihood of confusion, the Court took issue with its assessment of the degree of similarity between the signs. The General Court made its own assessment of the signs and seized the opportunity to reiterate established principles on dominant elements and conceptual similarity.

## Background

The Fédération Française de Football (the FFF) filed an opposition against a European Union trade mark (EUTM) application by Spanish company Kokito I Punt SL (the Application) for a figurative sign depicting a stylised rooster and shown below covering “headgear, footwear and clothing” in Class 25.



The opposition was based on the EU Trade Mark Regulation art.8(1)(b),<sup>2</sup> claiming a likelihood of confusion with the earlier EUTM registration also featuring a stylised rooster and set out below, covering identical goods in Class 25.



EUIPO's Opposition Division upheld the opposition, confirming that the goods were identical and targeted the general public with an average degree of attention, and determining that the marks were visually similar to “at least a below-average degree” and “conceptually similar to at least a high degree”. While there were some differences between the figurative elements, their overall impression was similar.

EUIPO's Fourth Board of Appeal upheld the Opposition Division's decision. The Board considered that there was a risk that at least part of the relevant public might believe that the goods covered by FFF's earlier mark and those covered by the Application were provided by the same undertaking or by economically-linked undertakings. It took into account that it was common for a single clothing manufacturer to use sub-brands to distinguish its various lines from one another.

Kokito escalated the matter to the General Court, seeking the annulment of the Board's decision, on the grounds that it erred in its comparison of the two marks and in the global assessment of the likelihood of confusion. There was no dispute as to the relevant public or the identity of the goods.

## Decision

The General Court dismissed the appeal, endorsing the Board's conclusion on the likelihood of confusion, while revising the degree of similarity between the signs.

### *Distinctive and dominant elements*

The Board had found that both the figurative element (included in both marks under comparison featuring a stylised rooster) and the FFF lettering (included in the earlier mark) were distinctive for the goods at issue. It also considered that due to the size and position of these respective elements within the marks, the stylised rooster in the earlier mark was the dominant element, whereas the letters were only a secondary element. Kokito disagreed with this reasoning and argued that the word element should have been considered as being the dominant element in the earlier mark.

The General Court reaffirmed the established principle that for the purposes of assessing the distinctive character of an element making up a trade mark, it is necessary to examine the ability of that element to contribute to identifying the goods/services for which the trade mark has been registered as originating from a particular undertaking and thus, to distinguishing those goods/services from another undertaking, bearing in mind the inherent characteristic of the element in question. In other words, an element's distinctive character is assessed based on its ability to identify a product's commercial origin. The General Court further underscored that the dominant element of a trade mark is determined by its visual prominence and consumer perception.

In the current case, while the letters FFF must be taken into account when comparing the signs, the General Court agreed with the Board that they only occupied a secondary position in the earlier mark. Given

<sup>1</sup> *Kokito I Punt SL v European Union Intellectual Property Office (EUIPO)* (T-104/24) EU:T:2025:10; [2025] E.T.M.R. 12.

<sup>2</sup> Regulation 2017/1001 on the European Union trade mark [2017] OJ L154/1.

its size and central positioning, the stylised rooster was more striking than the letters FFF and therefore dominated the earlier mark in the overall impression.

### *Visual comparison*

The General Court also endorsed the Board's finding that the signs were similar but found that the Board had underestimated the degree of visual similarity between the marks. It should have concluded that there was an average degree of similarity between these marks rather than an "at least below-average" degree of similarity.

The General Court stated that the visual similarities between the signs resulted from the common figurative element depicting a stylised rooster, being the sole element of the Application and the dominant element of the earlier mark.

While the roosters featured some differences—facing opposite directions (left for the Application and right for the earlier registration), having different colours and varied detailing in their body and head representation—they were stylised in an essentially similar manner:

- both roosters shown in profile;
- the plumage forming their bodies, with feathers being represented by a series of curves arranged in the same way; and
- the rooster's heads containing no outline, composed of four elements drawn in a fairly basic manner: a dot for the eye, a chevron shape for the open beak and basic drawings for the barbel and crest.

In the General Court's view, the rooster representations resembled each other not only because they shared basic rooster traits, but also because some features common to roosters were not reflected (both roosters lacked visible legs).

The differences between the signs, relating to the letters FFF and the decorative elements in the earlier mark, could not offset the similarity of the stylised roosters even if these figurative elements were not identical.

### *Conceptual comparison*

The General Court confirmed that both marks conveyed an identical concept: a highly stylised and impressionistic rooster. As such, the Board should have found them conceptually identical, rather than "highly similar".

Indeed, it is settled case law that conceptual similarity arises when two marks convey the same idea or concept.<sup>3</sup> The General Court found that the letters FFF in the earlier mark had no clear semantic meaning and did not alter the conceptual perception of the marks. Therefore, in the General Court's view, despite

differences in stylisation, the relevant public would perceive both marks as conveying the same concept of a highly stylised and impressionistic rooster.

The Court also confirmed that the marks were not conceptually similar merely because they depicted the same animal, but also because they both represented the same highly stylised concept of a rooster, i.e. "the same precise and specific concept".

### *Likelihood of confusion*

In the global assessment of the likelihood of confusion, the General Court upheld the Board's decision. It observed that the Board assessed the marks as a whole and the differences between them. Those differences were insufficient to rule out a likelihood of confusion.

Given the average visual similarity, the conceptual identity between the marks, the identity of the goods and the earlier mark's average distinctiveness, the General Court confirmed that there was a likelihood that consumers would believe the goods to come from the same or economically linked undertakings.

Finally, the General Court dismissed Kokito's claim that the Board's decision effectively prohibited the use of rooster depictions in trade marks. The ruling did not hinge on the mere presence of a rooster, but rather from the specific way in which those roosters were represented.

### **Comment**

This decision highlights the General Court's willingness to refine the assessment of similarity in trade mark disputes, and the Court did not hesitate to reexamine the degree of similarity between the marks.

This decision reaffirmed key principles in determining distinctive elements and conceptual similarities. In this regard, two trade marks should be considered conceptually identical when they consist of images or elements that convey the same concept, regardless of minor stylisation differences. However, the ruling does not mean that all rooster depictions are problematic. The likelihood of confusion stemmed from the specific manner of representation.

Interestingly, Kokito filed two additional trade marks for "headgear, footwear and clothing", featuring different rooster designs as shown below.

<sup>3</sup> See *Beauty Boutique sp z oo v European Union Intellectual Property Office (EUIPO)* (T-12/23) EU:T:2023:768 at [42]; [2024] E.T.M.R. 5.



These applications were successfully opposed by LCS International SAS, the company behind Le Coq Sportif (i.e. “the athletic rooster”), the renowned French sportswear brand associated with the Gallic rooster, a national symbol of France. Clearly, when it comes to trade mark disputes, there can only be so many roosters in the ring.