

I Love Does Not Constitute a Valid Trade Mark in Relation to Clothing

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The European Union (EU) General Court has issued three decisions on appeal from European Union Intellectual Property Office (EUIPO) brought by the German company sprd.net AG concerning its three European Union Trade Mark (EUTM) applications for position marks featuring the “I LOVE” sign, featuring a heart shape instead of the term “love”, in relation to clothing.¹ The General Court confirmed the Board of Appeal's assessment of the three applications seized the opportunity to reiterate established principles on the distinctive character assessment of position marks.

Background

The German company sprd.net filed three EUTM applications as position marks shown below, covering “*clothing, in particular t-shirts, sweat-shirts and pull-over*” in class 25.

¹ *Sprd.net AG v EUIPO* (T-304/24) EU:T:2025:695; (T-305/24) EU:T:2025:696 and (T-306/24) EU:T:2025:697 (9 July 2025).



According to the description provided by sprd.net, the applications comprised “a sign consisting of the capital letter ‘I’ followed by a red heart, placed on an item of clothing on the left side of the chest, on an inside label of an item of clothing or on the exterior of an item of clothing, on the back of the neck. The dotted lines represent the outline of an example of clothing and illustrate the position of the respective trade mark. They do not form part of the marks applied for”.

The EUIPO examiner rejected the applications, considering that the marks applied for lacked distinctive character. Upholding those decisions, EUIPO’s First Board of Appeal considered, in particular, that the characterisation of the applications as “position marks” could not establish their distinctive character. Such banal signs, which would be understood immediately and without further consideration as the expression “I love”,

would not be perceived as an indication of origin. Their position on the goods at issue did not confer any distinctive character.

Sprd.net escalated the matter to the General Court, seeking the annulment of the Board’s decisions arguing notably that the Board of Appeal was wrong to consider that the applications were devoid of distinctive character and failed to take into account the habits of the relevant sector.

Decision

The General Court dismissed those actions, confirming the Board’s rejection decisions. According to the General Court, EUIPO did not err in concluding that the specific location of a figurative sign on an item of clothing was not such as to confer on this sign, which was in itself devoid of distinctive character, such character with regard to the goods at issue.

The figurative sign “I LOVE (heart-shape)” is not distinctive in relation to clothing

Sprd.net referred to an order dated 12 February 2021 (the Order),² in which the General Court held that the figurative sign set out below was devoid of distinctive character since the corresponding word mark “I love” would be perceived by the relevant public as a laudatory promotional message.



Sprd.net disputed this and the identical conclusion reached by the Board of Appeal in these appeals. It argued that the capital letter “I” was the dominant element of that figurative sign and had distinctive character. The sign was not limited to the representation of a simple geometric shape but is the result of a design with a fanciful character, which is proven by popularity.

Dismissing that argument the General Court reiterated that the figurative element itself, and not only the word element to which it corresponds, would be immediately and solely perceived by the relevant public as a laudatory promotional message expressing a preference or affection for the goods at issue, which did not trigger any effort of interpretation or process of reflection on the part of the relevant public. Consequently, it was devoid of distinctive character.

The General Court also confirmed that a sign already commonly used on the market in countless formulas and combinations does not allow the product for which registration is sought to be identified as originating from a particular undertaking and therefore to be distinguished from those of others. Accordingly, the General Court endorsed the Board’s finding that the applications did not contain, beyond their obvious promotional meaning, any distinctive element which could enable the relevant public to memorise them easily and immediately as signs

² Sprd.net v EUIPO (T-19/20) EU:T:2021:89.

intended to distinguish the commercial origin of the goods at issue. The signs are devoid of any originality or particular salience, due to their already widespread use on the market.

A position mark will not confer distinctive character to a sign devoid of distinctiveness

Sprd.net further argued that as the present matters concerned applications for position marks, it was not possible to transpose the considerations contained in the Order to these specific matters. The I LOVE sign was placed in a specific position and was therefore not limited to a decorative element. The particular features of a position mark should be taken into account as the purpose of position mark applications is to limit protection to the specific way in which the figurative elements, colours or other elements are placed or affixed to the goods. As a result, the scope of protection of a position mark would be more limited than that of a word or figurative mark and it would be necessary to take into account the concrete positioning of a position mark when assessing its distinctive character. In other words, according to sprd.net, the registration of a precise positioning of the I LOVE sign on an item of clothing, requested as position mark, was sufficient to confer on these applications a distinctive character.

The General Court confirmed that the Board of Appeal rightly found that a figurative sign devoid of distinctive character does not automatically acquire it solely because its registration was applied for as a position mark. In this regard, the court reiterated that the scope of protection of a position mark is in principle narrower than that of a word or figurative mark. Logically, it is therefore necessary to take into account the specific positioning of a position mark when assessing its distinctive character, as well as the marking habits specific to the sector of the goods covered by the position mark in question.

The General Court considered that the approach followed by the Board was fully in line with this logic. It reiterated that the classification of a position mark is irrelevant in the assessment of its distinctive character. Therefore, the criteria for assessing the distinctive character is no different from those applicable to other categories of marks. However, in applying those criteria, the perception of the average consumer is not necessarily the same depending on the mark as that consumer was not in the habit of presuming the origin of goods based on their shape or that of their packaging, in the absence of any graphic or textual element. It could therefore prove more difficult to establish the distinctive character of a three-dimensional mark than that of a word or figurative mark. In those circumstances, only a mark which significantly deviates from the norm or customs of the sector and, as a result, is capable of fulfilling its essential function of indicating origin is not devoid of distinctive character. This case law, developed in relation

to three-dimensional marks consisting of the appearance of the product itself, also applies where the mark applied for is a position mark.

The I LOVE sign was not inherently distinctive and the General Court agreed with the Board of Appeal that such a banal sign would not be perceived as an indication of origin even if it were affixed in a place where a trade mark is often, but not exclusively, affixed by the manufacturers of the goods concerned, such as, for example, on the outside of a garment. It was a well-known fact that not only signs with a distinctive character were affixed to the outside of a garment, but also a wide variety of advertising signs or slogans without any distinctive character.

Therefore, contrary to what sprd.net suggested, in reaching its decisions the Board of Appeal took into account both the specific positioning of the applications and the marking habits specific to the sector of the products in question.

The crucial importance of marking practices in the clothing sector in assessing the distinctive character of position marks

Sprd.net argued that a sign affixed in a specific location where, in the sector concerned, it is customary to affix signs indicating the origin of the goods in question, always has distinctive character. According to sprd.net, it was common to affix marks in small format and on the outside on outerwear.

However, the General Court noted that the examples submitted by sprd.net related exclusively to intrinsically distinctive marks, so that they were not capable of proving its claim that, in essence, the positioning claimed would be such as to systematically justify the distinctive character of any sign so positioned.

The General Court also considered that the Board of Appeal rightly pointed out that there is no general rule according to which a sign may be registered, in the clothing and related goods sectors, if it can be affixed to a label inside the goods. The mere affixing of a sign to a product, a label or a means of presentation does not automatically result in the relevant public perceiving that sign as an indication of the commercial origin of that product and no longer as a promotional message. To accept the contrary would necessarily amount to allowing any applicant for an EU trade mark to circumvent the absolute ground for refusal related to the distinctive character by simply invoking, for the application, a method of affixing that is significant in the sector concerned.

Consequently, the positioning of the figurative sign I LOVE on an item of clothing was not capable of conferring on that sign, which as such lacked any distinctive character, a distinctive character in relation to the goods in question.

Accordingly, the General Court confirmed the Board of Appeal's finding that the applications are devoid of distinctive character and rejected the appeal.

Comment

Position marks—which are trade marks defined by a sign not only as is but also by its placement on the product for which protection is sought—have gained attention among branding strategies seeking non-traditional avenues to secure trade mark protection in the EU.

This decision reaffirms enduring EU principles: widely used symbols or expressions—regardless of their stylisation or placement on a product—cannot be exclusively claimed through trade mark registration by an undertaking, unless they distinctly indicate the origin of said product. The distinctive character of a sign is non-negotiable when it comes to registering a trade mark, and the positioning of this sign on a product cannot compensate for the lack thereof. As fashion trends increasingly use common expressions, this decision merely cements the necessity for distinctiveness as the cornerstone of trade mark protection.