

EU General Court Decided on Invalidation of Adidas' Three Parallel Stripes Trademark Due to Lack of Distinctiveness

18 Jul 2019

General Court of the European Union ("**General Court**") has considered the decision of the Cancellation Division of the European Union Intellectual Property Office ("**EUIPO**") on invalidation of Adidas' three vertical and parallel black stripes trademark registration. The General Court decided that the evidence provided by Adidas regarding acquired distinctiveness through use was insufficient on the following basis:

- The evidence mostly included different uses of the trademark, and
- The evidence did not cover all EU countries.

Accordingly, the General Court approved the EUIPO's decision.

Adidas' three parallel and vertical black stripes trademark was registered in 2014 for "*clothing, footwear, headgear*" before the EUIPO. However, in 2016, a Belgian competitor company, Shoe Branding Europe BBVA, filed an application for the trademark to be annulled due to the lack of distinctive character.

EUIPO accepted the invalidation request and agreed that the trademark should not have been registered in the first place as it lacks the distinctive character. Adidas appealed the decision before EUIPO's Appeal Board and argued the trademark acquired distinctiveness through use. The appeal was refused as the Appeal Board found the evidence insufficient.

Adidas sought cancellation of the EUIPO's invalidation decision before the General Court. The Court has examined the evidence as well as the market surveys provided to the file and decided to refuse Adidas' request based on the following grounds:

- Contrary to Adidas' claims, the trademark is not a pattern mark but registered as a simple figurative mark, which should be used as registered. Given the extreme simplicity of the mark at issue, even a slight variation such as the inversion of the color scheme or dimension of the stripes could produce a significant alteration to the characteristics. The use of white stripes against a black background or different angled stripes or different colors are not the genuine use of the trademark.
- The market surveys regarding the use of the trademark, which meet the above requirement, were conducted only in Germany, Estonia, Spain, France, and Romania. The surveys that cover only five member states cannot be deemed sufficient to prove acquisition through the whole territory of the EU.
- The participants had previously been asked whether they had already encountered that mark in relation to sportswear or sports equipment. Even though this was not contradicted by EUIPO, insistence on the use of the mark at issue during sports activities and competitions affects surveys' credibility.

Adidas is entitled to challenge the General Court's decision before the European Court of Justice. Regardless, Adidas has registrations of its three-stripes mark in various forms in Europe, and therefore, will continue to enjoy its rights arising from other registrations.

Please see this [link](#) for the full text of the General Court's decision dated 19 June 2019.

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