NJORD Lithuania: Perfume bottle as a distinctive mark characterising the brand

On 11 February 2021, the Lithuanian Court of Appeal resolved a dispute between the State Patent Bureau (hereinafter the SPB) and the Swiss company „Chanel SARL“ concerning the registration of a trademark – the image of a perfume bottle.

The Lithuanian Court of Appeal points out that originality is not required when assessing whether a mark is distinctive. However, the public must perceive the connection between a particular mark and a product or service. The evidence submitted by “Chanel SARL” (various promotional materials) shows that “Chanel SARL” uses its trademark (a bottle of a perfume product) with other trademarks – namely word marks, which make it possible to identify the manufacturer of the product and the trademark associated with it. However, the court found that there was a lack of evidence in the case that the public associated the mark applied by “Chanel SARL”, as such, with the company.

When assessing whether there is distinctive character or acquisition, the relevant market and geographic area of the mark are relevant. Research in France – sociological surveys, according to which it is evident that the public recognises the disputed trademark and identifies the “Chanel SARL” product, does not document recognisability in the Lithuanian society. The granting of an international protection registration mark in other states is not a ground for granting protection to the disputed mark in the Republic of Lithuania, since, in the case of an international registration, the issue of legal protection is decided on the basis of the evidence in the application in a particular country and the assessment of the public's perception of the sign of the dispute.