



Mercedes star pattern mark rejected by General Court

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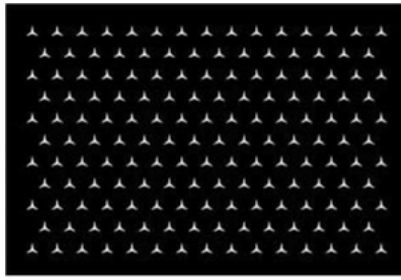
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- Daimler sought to register a figurative mark consisting of a pattern of white, three-pronged stars on a black background for a wide list of goods and services
- The EUIPO found that the relevant public would perceive the mark exclusively as a decorative configuration, and not as an indication of origin
- The General Court confirmed, dismissing Daimler's arguments concerning the reputation of the mark consisting of a three-pointed star in a ring

In [*Daimler AG v European Union Intellectual Property Office*](#) (EUIPO) (Case T-280/21, 30 March 2022), the General Court has confirmed a ruling of the Fifth Board of Appeal of the EUIPO that an application consisting of white, three-pronged stars repeated on a black background was devoid of distinctiveness.

Background

Daimler AG's predecessor-in-interest Mercedes-Benz Group AG applied for the registration of the following figurative mark as an EU trademark for a wide and diverse list of goods and services in Classes 3, 6, 7, 8, 9, 11, 12, 14, 16, 18, 20, 21, 24, 25, 27, 28, 35, 36, 37, 39, 41 and 43:



The white, three-pronged star is reminiscent of the famous Mercedes star logo, without the ring.

The EUIPO held that the mark applied for was devoid of distinctiveness pursuant to Article 7(1)(b) of Regulation 2017/1001, and rejected the application for all goods and services. This decision was affirmed by the Fifth Board of Appeal of the EUIPO, which held that the white, three-pointed elements were simple geometric shapes which were not suitable for being remembered by the relevant public, who would perceive them as purely decorative elements. The board concluded that the relevant public would consider the mark applied for only as a shape or configuration, among many other possible ones, making it possible to configure the surface of the goods or their packaging. Therefore, the relevant public would perceive the mark exclusively as a decoration in the form of a pattern, and not as an indication of the commercial origin of the goods.

Daimler appealed to the General Court.

Decision

Daimler first claimed that the Board of Appeal had erred in law in not considering that the excellent reputation of the trademark 'three-pointed star in a ring' would lead the relevant public to recognise, in the mark applied for, an indication of the origin of the goods/services at issue. In this regard, Daimler referred to recent expert reports on the reputation acquired by the 'three-pointed star in a ring' mark on the German, French and Spanish markets, which showed a very high, continuous reputation on these markets in a range of 97.7% to 99.4%. Daimler argued that the omission of the ring surrounding the remarkable element of the three-pointed star did not cause the sign to lose its notoriety or even its function of indicating the commercial origin of the goods and services. The General Court rejected such evidence and arguments, pointing out that Daimler was not claiming acquired distinctiveness under Article 7(3) of the regulation, but rather inherent distinctiveness. The General Court thus dismissed this claim.

Secondly, Daimler claimed that the board had erred in ignoring the large number of decisions by the national courts and trademark offices of other member states according to which the mark 'three-pointed star in a ring' enjoyed an excellent reputation. Again, the General Court simply noted that Daimler was not invoking Article 7(3) on acquired distinctiveness and, accordingly, this claim was not legally relevant.

Finally, Daimler criticised the board's findings that the individual elements of the mark applied for were merely "simple geometric shapes" devoid of any distinctive character and incapable of being remembered by the relevant public. The hexagonal placement of the individual elements within the pattern created a sense of calm and elegance. In addition, the mark applied for was not so common as to be completely confused with the product and no longer be perceived as an independent sign. The General Court held as a matter of law that the mark, which consisted of the repetition of a simple white geometric shape on a black background, did not significantly deviate from the norms and customs of the sector concerned and, therefore, did not have any characteristics suitable to confer intrinsic distinctive character on it, within the meaning of Article 7(1)(b). The relevant public would perceive it only as an arrangement in the form of a grid, among thousands of other possible ones, with a decorative character and consisting of simple elements.

Accordingly, the court affirmed the decision of the Fifth Board of Appeal and rejected the action.

Comment

Although this does not appear in the decision of the General Court, Daimler filed evidence before the Board of Appeal that the three-legged star without the ring (depicted below) was registered, having been filed on the same day as the contested application, for the same list of goods and services.



Daimler argued that the repetition of the same element did not render the mark devoid of distinctiveness. However, this case shows that the EUIPO can consider such patterns as mere decorations, even though the elements themselves are registrable. It will be interesting to see whether Daimler files a further appeal.

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