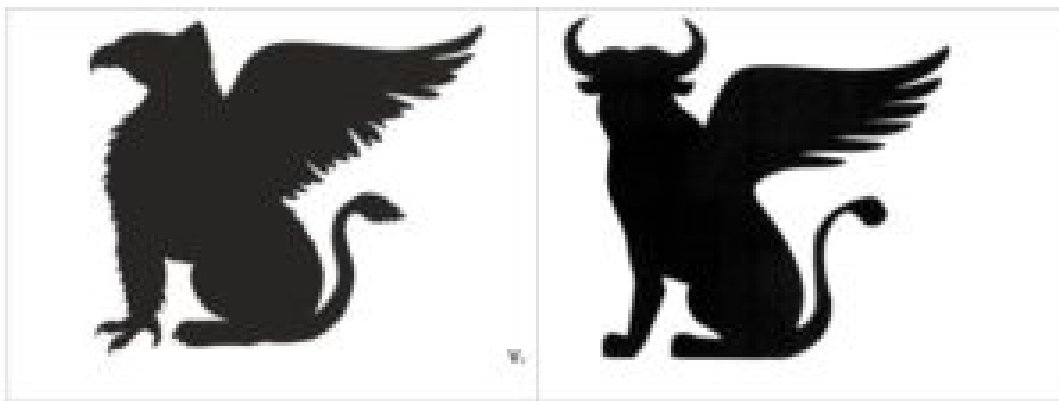


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The Griffin beats the Winged Bull: Marriott prevails before the GC

Verena von Bomhard (BomhardIP) · Tuesday, March 20th, 2018



On 15 March 2018, Marriott Worldwide Corp., assisted by Anna Reid (D. Young & Co.), scored a major victory at the General Court (case T-151/17) against EUIPO and Mr. Johann Graf.

Johann Graf had registered the „winged bull“ device or „taurophon“ as shown above on the right as an EUTM for, inter alia, class 43 services (provision of food and drink). Marriott owned earlier trade mark rights to the „Griffin Device“ as shown above on the left, registered for identical services, and - based on those and on copyright residing in the same design - requested that Mr. Graf's EUTM be declared invalid.

This request failed before both the EUIPO's Cancellation Division and the Fourth Board of Appeal, both of which held that the signs at issue were completely dissimilar - so much so that there was no need to assess the alleged enhanced distinctiveness of Marriott's Griffin Device. On the same grounds, the Board of Appeal also rejected the copyright claim, as a dissimilar sign cannot be a reproduction, and - by way of an obiter - even questioned the existence of the copyright, although this apparently had not been put in issue by Mr. Graf.

The General Court disagreed with the assessment of similarity and confirmed that the signs were both visually and conceptually similar at least to a low degree. While one was a mythological creature and the other an invented one, both consisted of a mixture of animals together, with wings over upward curled tails and with a lion's lower back body and paws. The position and overall impression therefore displayed

similarities that were not completely outweighed by the mere fact that the heads were those of different animals (namely, an eagle and a bull, respectively).

On the same ground, the findings of the Fourth Board in respect of copyright were also annulled as they were based on the incorrect assumption that the signs were utterly dissimilar.

This is one of the relatively rare cases where the General Court rules differently from both instances at EUIPO. The decision is welcome in that, once again, the Fourth Board was rather quick in denying any similarity between the marks, thereby avoiding any analysis of all the other points raised, in particular, the distinctiveness of the earlier mark.

One thing that surprises is that Red Bull never opposed this “winged bull” – does it not remind you of Red Bull’s flagship animal combined with its slogan “Gives You Wings”? Mr. Graf is from Austria, Red Bull’s backyard, and his EUTM also covers non-alcoholic beverages in class 32, including of course energy drinks...

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