

Polish-English 'HOUSE OF CARS' before the EU General Court

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It does not happen every day that you can see a trademark case decided by the EU General Court with a Polish claimant (EUTM applicant), represented by his Polish attorney, with a Polish judge as the rapporteur and even with Polish national acting as the EUIPO's representative. One of very few non-Polish aspects of this case is the trademark itself – the word mark **'HOUSE OF CARS'**, applied for *inter alia* various **vehicle and transport related services** in classes 35, 37 and 39.

With its judgment of April 17, 2018 (T-364/17), the General Court confirmed the earlier decisions of the EUIPO and the Board of Appeal, according to which the EUTM 'HOUSE OF CARS' is **devoid of any distinctive character** in respect of the services at issue and must be refused registration under **Article 7(1)(b) EUTMR**. As the Court stated, the trademark applied for consists of elements that have a meaning in English and, therefore, the assessment of its distinctiveness must be carried out from the point of view of the English-speaking public. The word 'HOUSE' can be understood as a building having specific purpose, a company or institution, while the word 'CARS' obviously means 'cars' (i.e. vehicles). When linked with the preposition 'OF' (i.e. correctly from the English grammar point of view), altogether these words can be understood as a 'company running the vehicle-related business'. Consequently, the sign has **direct relation** to the respective services (which directly concern or may concern the vehicles) to such an extent that the relevant public, immediately and without further reflection, will see in it the definition of the company's activity and its specialization (car industry). For that reason, the sign will not be perceived by the relevant public as an indication of the

commercial origin of the services. The Court also confirmed the finding that the fact that the sign at issue may also have other meanings cannot undermine the conclusion that the mark applied for is devoid of any distinctive character. Also the argument that the expression “house of cars” does not exist on the market was not convincing for the Court, which stated that the mere fact that the expression is not actually used by other market operators is not sufficient to establish that such expression can serve as an indication of the commercial origin of the services at issue. Finally, the Court confirmed that the Board of Appeal was right to note that it is sufficient for the application of Article 7(1)(b) EUTMR that certain services may relate to vehicles and **the link with vehicles has not been excluded**, even in the lack of explicit references to vehicles in the specification. This makes them all belong to **one category or group of services**, which is sufficiently ‘homogenous’ for the purposes of examination of the trademark’s distinctiveness.

Finally, the Court (making several references to another EU trademark case with Polish background: *Agencja Wydawnicza Technopol / OHIM, C-51/10*) confirmed that the earlier decisions of the EUIPO and the Board of Appeal were not in breach of the principles of protection of legitimate expectations and legal certainty. The fact that the EUIPO had previously registered other ‘HOUSE OF ...’ marks should not be an argument in the case at issue because – with such a clearly non-distinctive sign as ‘HOUSE OF CARS’ – **the principle of legality** cannot be infringed to satisfy expectations that the applicant could have had in relation to the registration of another mark based on the same concept. The legality of the decisions of Boards of Appeal must be assessed solely on the basis of the EUTMR, as interpreted by the EU judicature, and not on the basis of a previous decision-making practice.

While the Court’s approach presented above is not very surprising in light of the well-established case-law, one may also consider whether ‘HOUSE OF CARS’ is not a nice wordplay on ‘HOUSE OF CARDS’...