

Not all trees are magic: Julius Sämann loses before the General Court

Kluwer Trademark Blog

February 25, 2020

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Please refer to this post as: Verena von Bomhard, 'Not all trees are magic: Julius Sämann loses before the General Court', Kluwer Trademark Blog, February 25 2020,

<http://trademarkblog.kluweriplaw.com/2020/02/25/not-all-trees-are-magic-julius-sa-mann-loses-before-the-general-court/>



On 30 January 2020, the General Court of the European Union confirmed the Board of Appeal's decision rejecting the opposition brought by Julius Sämann against the EUTM application for the sign shown above, based (inter alia) on the silhouette of its "magic tree":



(Case no. T-559/19). The Court agreed with the Board of Appeal (which had in turn confirmed the EUIPO's first instance decision) that there were no likelihood of confusion and no risk of a "link" leading to misappropriation, between Julius Sämänn's earlier rights to the "Magic Tree" and this device, even though it was applied for to cover also identical goods (i.e. air fragrancing preparations) as part of a wide list of goods in class 3 (inter alia). The signs were simply too different.

In particular, there was no visual similarity, and a phonetic comparison did not apply as both marks were merely figurative. While this had occasionally been seen differently in the GC case law, that could only apply where the device(s) would be "immediately associated with a single word". Given the deciduous nature of the tree device in the application and its various elements (roots, flowers, branches etc.), it was not correct to simply consider it a "tree" and conclude that because of that, it was phonetically similar to the earlier "tree".

The marks were also held not to refer to the same concept because Julius Sämänn's device was the silhouette of a fir tree while the tree device in the opposed application was a deciduous tree or evoked the concept of a "tree of life".

It is yet to be seen whether this decision has an impact on Julius Sämänn's enforcement strategy to contest later marks in class 3 that consist of or contain tree devices. Julius Sämänn is currently opposing (first instance) inter alia the following device marks:



and, finally, this one:

One wonders... which is in line with the German name of the “magic tree” of Julius Sämänn: WUNDERBAUM.