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Decision of the Swiss Federal Supreme Court in the FIFA v. PUMA case

Peter Schramm (MLL Meyerlustenberger Lachenal Froriep AG) · Wednesday, June 1st, 2022

The Swiss Federal Supreme Court upheld FIFA's claim and found that the figurative marks "PUMA WORLD CUP QATAR 2022" and "PUMA WORLD CUP 2022" were misleading. At the same time, it ruled on the counterclaim by Puma that the trademarks "WORLD CUP 2022" and "Qatar 2022" refer descriptively to the World Cup event and are therefore not inherently distinctive. The Court ordered all 4 marks to be removed from the register and referred the case back to the first instance to decide on the question of injunctive relief ([click here for the decision of 6 April 2022](#)).

According to the Court, it can be assumed that the Swiss consumers of sporting goods, clothing and accessories will directly perceive the term "WORLD CUP QATAR 2022" and – due to the notoriously high interest in the football world championships – also the term "World Cup 2022" as a reference to the Football World Cup to be held in Qatar in 2022. For this reason, the average consumer will infer from the two registered trademarks "PUMA WORLD CUP QATAR 2022" and "PUMA WORLD CUP 2022" the misleading impression that PUMA is the title sponsor of the 2022 Football World Cup in Qatar.

With regard to the signs "WORLD CUP 2022" or "Qatar 2022" – which FIFA has not raised against PUMA in this lawsuit (FIFA's claim was only based on the act of registration and use of misleading signs according to Art. 2 lit. c MSchG and unfair competition law) and were only brought into play via Puma's counterclaim – the Court said, that the public understands such designations as a description of the sporting event Football World Cup itself, that they are therefore descriptive and lack inherent distinctiveness. However, the Federal Supreme Court left the door open to proof of acquired distinctiveness for those signs.

In summary, the judgment says that trademarks such as "PUMA WORLD CUP QATAR 2022" and "PUMA WORLD CUP 2022" are unlawful and that third party companies may not create the misleading impression that they are official sponsors of the FIFA World Cup tournaments. The signs "WORLD CUP 2022" or "Qatar 2022" were not considered to be inherently distinctive. However, the signs "WORLD CUP 2022" and "WORLD CUP QATAR 2022" were considered to have a secondary meaning referring to FIFA's Football World Cup and may therefore not be used by non-involved third parties in a manner pretending to be an official World Cup sponsor.

* FIFA was represented by the authors of this post.

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