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Germany’s most famous castle has been fortified

Michaela Ring (Hoffmann Eitle) · Thursday, August 4th, 2016

On July 05, 2016, the General Court confirmed the decisions of the invalidity department and the Boards of Appeal of the EUIPO and decided that the EU word mark “NEUSCHWANSTEIN”, registered by the Free State of Bavaria for goods and services in various classes remains registered since the trademark neither consists exclusively of an indication serving to designate the geographical origin of the goods and services and is not devoid of any distinctive character, nor was the mark applied-for in bad faith (GC decision of July 05, 2016, T-167/15).

On December 12, 2011, the European trademark no. 10144392 “NEUSCHWANSTEIN” was registered by the Free State of Bavaria as a word mark for goods and services in classes 03, 08, 14-16, 18, 21, 25, 28, 30, 32-36, 38 and 44.

On February 10, 2012, the German federal association *Bundesverband Souvenir – Geschenke – Ehrenpreise e.V.* filed an application for a declaration of invalidity pursuant to Art. 52 para.1 lit. a, b, Art. 7 para. 1 lit. b and c EUTM against the EU mark “NEUSCHWANSTEIN” which was rejected by the invalidity department as well as the Boards of Appeal of the EUIPO. On December 20, 2013, the *Bundesverband Souvenir – Geschenke – Ehrenpreise e.V.* filed an action against the decision before the General Court and based its action on three pleas, a violation of Art. 7 para. 1 lit. b, a violation of Art. 7 para. 1 lit. c and a violation of Art. 52 para. 1 lit. b EUTM.

Regarding Art. 7 para. 1 lit c, the claimant argued the trademark was descriptive as “NEUSCHWANSTEIN” was a geographical place and the mark thus merely indicated the geographical origin of the goods and services offered. This was in particular due to the fact that there was a tradition of selling souvenirs at or around the castle. Further, the mark was descriptive as the relevant public associated their visit to the castle with such souvenirs.

The Court opposed this view, remarking that “NEUSCHWANSTEIN” was merely an imaginary term (literally meaning “new stone of the swan”) which describes the castle as a building structure. Thus, whilst “NEUSCHWANSTEIN” could be located geographically within the community of

Schwangau in the Free State of Bavaria, it was not a geographical place and therefore not allow the relevant public to create a link to the goods and services.

Further, the fact that the mark designated the castle, did not lead to the conclusion that it described the geographical origin of this souvenirs or the services. Rather, the castle was a famous attraction set up as a museum with the main function of preserving the cultural heritage. The relevant souvenir articles were not produced within the castle, but are only marketed and sold there for tourism purposes. Moreover, the castle was not known for its souvenirs and services, but its architectural uniqueness. The souvenirs were merely byproducts constituting an additional source of income, in the same way entrance tickets did. As a result, the trademark could not act as an indication of geographical origin.

As to Art. 7 para. 1 lit. b Reg. 207/2009, according to the claimant, the trademark was devoid of distinctive character as the goods and services labelled with the sign “NEUSCHWANSTEIN” would be perceived to have been obtained during a visit of the castle. Thus, the labelling did not constitute a reference to a particular company. Moreover, the protection of the national German trademark had already been withdrawn in accordance with the ruling of the German Federal Court (BGH), so the Court was to follow suit.

The Court started by indicating that the goods were designed for continuous use and everyday services, which only differed from other souvenirs or touristic services in their designation. This designation described the castle in its function as a museum as well as the challenged mark. The word forming the trademark was an imaginary term which had no descriptive connection in relation to the relevant goods and services. Further, the combination of the term “Neuschwanstein” with the goods and services meant these could be distinguished from other goods and services on offer at commercial or touristic places. In particular, the trademark did not constitute an advertising medium or a slogan; rather it enabled the relevant public to distinguish commercial origin, at the same time as linking the goods and services to a visit to the castle. On this basis, the trademark was indeed distinctive.

Finally, as the EU system was autonomous and independent from national systems, the German decision did not need to be considered.

Further, the claimant argued that the Free State of Bavaria was aware of various companies offering goods with the designation “Neuschwanstein” and wanted to use the registration to prevent these companies from continuing to do so.

According to the Court, however, the claimant had failed to submit sufficient evidence to support

this argument. Further, the Free State of Bavaria's main aim in registering the trademark was to ensure the castle as a museum was maintained and cared for.

On this basis, the trademark "NEUSCHWANSTEIN" remains protected. Tourists will continue to have to conquer the castle to obtain their much-treasured Neuschwanstein souvenir.

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