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OK. Everyone knows MESSI. But Miley Cyrus?

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As you may recall, the CJEU in cases C-449/18P and C-474/18P of 17 September 2020, (see http://trademarkblog.kluweriplaw.com/2020/09/23/lionel-messi-scores-his-surname-trade-mark-the-cjeus-own-goal/) held that consumers recognized MESSI as the surname of the soccer player Lionel Messi, and considered this fact a matter of common knowledge because any reasonably observant and circumspect consumer was thought to regularly read in the newspapers or hears on the radio about him.

The CJEU's conclusion may or may not be factually (and legally) correct, but given the worldwide attention to soccer and soccer players perhaps it may be a plausible "inference" and justifies a finding that MESSI and MASSI are not confusingly similar. Yet, it really seemed an exceptional decision, quite unlikely to be extended or applied to other cases, especially for identical names.

Well, we were all wrong. Because, of course, with the decision T?368/20 of 16 June 2021, the General Court set the same standard for Ronaldo's own trademark.

NOT!!!!!!!!!!!!!

Case T?368/20 did not deal with Ronaldo, but rather with Ms Miley Cyrus, who may perhaps be a talented musician, but certainly is neither Messi, nor Ronaldo.

In short, **MILEY CYRUS** was filed for various goods and services in classes lasses 9, 16, 28 and 41 and got an opposition based on a stylized mark CYRUS in classes 20 and 41.

Not surprisingly, the Opposition Division and the BOA upheld the opposition.

However, the GC reversed and held that, in this case, the surname CYRUS and the name MILEY should have been considered equally distinctive. Furthermore in the conceptual comparison between CYRUS and MILEY CYRUS, the GC held that "*since Ms Miley Cyrus is a public figure of international reputation known to most well-informed, reasonably observant and circumspect persons who read the press, watch television, go to the cinema or listen to the radio, where they can see her or listen to her sing or where she is regularly spoken of, it follows that* ***the relevant***

public will understand the mark applied for as designating the name of the famous American singer and actress".

On the contrary, the public would perceive the earlier mark CYRUS as having no meaning because Miley Cyrus is not known by the short name CYRUS alone.

The GC logic is puzzling and does not seem to take into consideration that for all the public who have no clue about who Miley Cyrus is (clearly many many more people than those who may not know who Messi is…) the above line of reasoning is totally inconsistent with decades of case law we have known of, at least as far back as the Medion case (case C?120/04). In addition even for those who do know Miley Cyrus – and contrary to the Messi case, where the earlier mark was MASSI and the renown of MESSI was held sufficient to tip the balance against confusion- it seems difficult to deny that the total coincidence of the CYRUS component has a consequence.

As also (and regrettably in vain) argued by EUIPO, since neither 'miley' nor 'cyrus' is a common first name or surname, this implies that the relevant public who will identify the mark applied for, MILEY CYRUS, as referring to a famous singer, is also likely to perceive the surname alone as the short version of the full name, thus identifying the same person, i.e. a classic case of reverse confusion.

The refence to the earlier BARBARA BECKER judgment (C-51/09 P) in para. 33 of the MILEY CIRUS judgment is unconvincing, precisely because "Becker" is an extremely common last name, while "Cyrus" clearly isn't.

Thus, even though it might perhaps be justifiable that the (proven) notoriety of a famous person (or a famous brand) might be capable to exclude a likelihood of confusion with a similar mark, the "blank" extension by the GC to identical marks is unconvincing (if not worrisome…).

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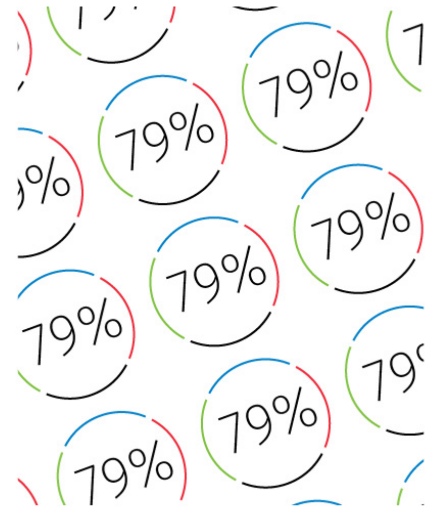

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