

# Kluwer Trademark Blog

## NOT EVEN TOM CRUISE. ANOTHER MISSION IMPOSSIBLE...

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First it was getting a registration as a trademark for the name of a State (see at <http://trademarkblog.kluweriplaw.com/2022/03/28/mission-impossible-register-the-name-of-a-state-as-a-trademark/>). Now, it is getting the European Union Court of Justice (CJEU) to review a decision of the General Court (GC) on trademark and design matters arising from the EUIPO Boards of Appeal.

As already reported (see at <http://trademarkblog.kluweriplaw.com/2021/12/31/2021-wrap-up-etms-in-luxembourg/>), since the amendment of Article 58a of the Statute of the Court of Justice (“Statute”) of May 1, 2019, appeals to the CJEU from the GC are subject to a filtering mechanism that allows appeals to proceed only where the appellant demonstrates that the issues therein addressed are “*significant with respect to the unity, consistency or development of Union law*”.

What makes an issue significant with respect to the unity, consistency or development of Union law is still somewhat of a mystery but the practical consequence of the change in the CJEU procedure is that, so far, the CJEU has only allowed two appeals to proceed, one at the end of 2021 on Community designs (see [here](#)), and one on EUTMs (see [here](#)).

In practice, successfully arguing that there are still a number of unresolved matters in trademark and design matters which are significant for the unity, consistency or development of Union law (and, in our view, there are) which need to be resolved by the CJEU has become a mission impossible. Not that this deters applicants from trying, even though it seems that not even Mr. Cruise’s “maverick” abilities suffice.



So, if you cannot beat them, join them, an old proverb says, which is more or less what Puma did, when it basically tried to put the GC’s judges against the CJEU’s judges by suing ... the Court of Justice of the European Union before the General Court, in case T?79/22, decided on June 15, 2022. But why did Puma sue the CJEU?

Puma had filed an appeal with the CJEU against the GC's judgment in case T-510/19. The CJEU, in a quite lengthy order, did not allow it (see case C-462/21). So Puma decided to file another appeal, this time before the GC, seeking the annulment of the CJEU's order, arguing that judicial decisions adopted by the CJEU may be annulled on the basis of Article 263 TFEU, besides [Article 47 of the Charter of Fundamental Rights](#) of the European Union, since the German and Czech versions of that provision allow the words 'bodies, offices or agencies of the Union' to be interpreted as referring to any entity of the European Union, including the CJEU.

The GC dismissed the action as manifestly inadmissible and denied even to serve it on the defendant CJEU. The GC held that judicial decisions of the CJEU have the force of *res judicata* and are not open to any challenge. Thus also a decision adopted pursuant to Article 58a of the Statute, relating to whether or not an appeal is allowed to proceed, is not capable of forming the subject matter of an action for annulment under Article 263 TFEU, regardless of what the German and Czech versions of that provision say, because an interpretation of Article 263 TFEU as meaning that it permits a subsequent review of judicial decisions adopted by the Court of Justice would be contrary to the principle that a judicial decision which has acquired the force of *res judicata* is no longer subject to challenge. Analogously, in proceedings closed by a judicial decision, the review of individual rights, in accordance with Article 47 of the Charter of Fundamental Rights, has already been ensured by the right to appeal before the CJEU under Article 56 of the Statute, which was already implemented in the case in comment by the applicant.

Nice try, though...It will be interesting to see if Puma now appeals to the CJEU although that, too, would appear to be a non-starter.

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