

# Kluwer Trademark Blog

## General Court: no automatic protection of vintage marks through bad faith

Verena von Bomhard, Daria Stajer (BomhardIP) · Friday, November 11th, 2022



<https://www.top-fashion.sk/moda/made-in-czech-slovakia/5521-nehera-nekonvencna-moda-so-silnym-pribehom>

<https://nehera.com/en>

Vintage marks – marks that only live on in people’s memories, but not on the market – face the challenge that trademarks that are not used can be cancelled. This conundrum has already been addressed in the earlier post on the CJEU [Testarossa](#) judgment.

One such vintage mark that gave rise to a dispute before the EUIPO that went to the General Court is NEHERA. This was a brand created by Jan Nehera, a Czechoslovakian fashion designer who, at the beginning of the 1930s, established a fashion business under his surname. Despite the brand’s success and great recognition, the NEHERA business was discontinued in 1946 when the company was nationalized.

In 2014, NEHERA was brought back to life by Mr Ladislav Zdút, who founded a fashion label under the name. He did not hide that he was fully aware of the trademark’s past, to the contrary, the website of the new NEHERA company ([here](#)) expressly states that “NEHERA is an independent Slovak brand that revived the heritage of the famous Czechoslovak brand that flourished in the 1930s”. Moreover, in the proceedings before the EUIPO, Mr. Zdút claimed that he was looking for an “old, unused and forgotten brand” to “pay tribute to the great days of the Czechoslovak textile industry of the 1930s”.

In 2019, descendants of Jan Nehera requested Mr. Zdút’s EUTM NEHERA to be declared invalid based on bad faith. They lost before the Cancellation Division but prevailed before the Second Board of Appeal. Mr. Zdút went to the GC, which decided in his favour on 6 July 2022 (case

T?250/21).

The GC sided with Mr. Zdút in denying that there was evidence that the NEHERA brand still had a reputation when the EUTM was filed, so there was nothing to take a free ride on (para. 59). The mere fact that Mr. Zdút knew about the historic fashion label did not tilt the balance against him. In this context, the GC appreciated the investment of time, effort, and money made by the applicant in the revival of the brand, stating that, given those circumstances, mere references to the history of NEHERA were not contrary to honest practices (para. 66).

This decision seems to break an emerging trend of an almost automatic assumption of bad faith in cases concerning vintage marks, the last iteration of which (to the extent the author is aware) was the invalidation of the HISPANO SUIZA (fig.) EUTM as having been filed in bad faith (cancellation no. C 47448; final). The so far best-known case is the GC's SIMCA judgment from 2014 (T?327/12) where bad faith was found as the EUTM owner deliberately wanted to create an association with SIMCA brand to take advantage of its reputation. In that case, however, there were some extra circumstances linking the EUTM owner to the legitimate owner of the Simca car brand (judgment mentioned [here](#))

Also, on a national level in Spain, there is divergent case law on the issue. In HISPANO SUIZA (Supreme Court, 8 February 2017, 70/2017) the Supreme Court did not find bad faith, even though the old vehicle brand was considered still present in people's memory, because the historical owner had lost his rights to the mark in Spain, and no longer had a position in the market of cars from which the defendant could benefit. On the other hand, in Pedro Miguel, the Court of Appeals of Granada stated that the non-renewal of a trademark did not prevent the declaration of invalidity of a later trademark if that had been registered in bad faith (30 December 2015, 299/2015).

The NEHERA judgment, rendered by the Tenth Chamber of the GC in the extended composition, i.e. by five judges, is good news for someone wanting to revive a historic brand the residual goodwill of which is de minimis. However, the question remains whether the mere fact that there is still some kind of reputation of the historic brand allows the (almost) automatic conclusion that the appropriation of that is done in "bad faith". The last word has not been spoken on that question.

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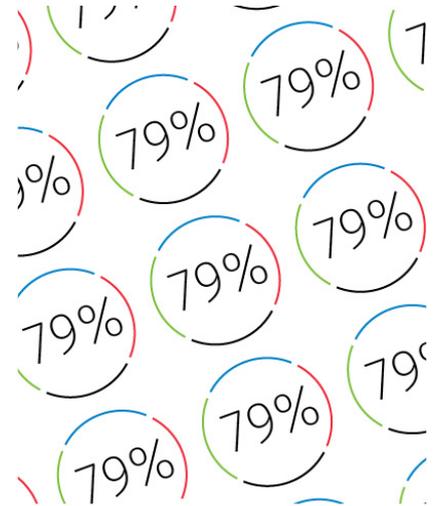
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“>General Court

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