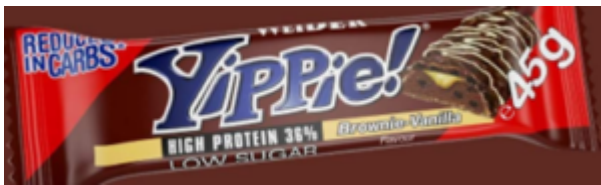


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YIPPIE! for YUPPIE – 2023 GC practice in retrospect (Part 1)

Verena von Bomhard (BomhardIP) · Friday, December 29th, 2023



The year is ending and so it is time, once again, to look at what has been coming out of the General Court (GC) over the past 12 months. While the numbers here are only approximate, resulting from searches on the Curia website and on Darts-ip, they do give an idea of what the GC has been up to.

2023 brought almost 300 decisions in total involving the EUIPO, 230 of which concerned trademarks, with more than 180 substantive judgments and 45 judgments and orders focusing on procedure.

Of the **procedural decisions**, 25 followed settlements between the parties and 12 concerned costs. The remainder concerned suspension of the GC proceedings, a correction of a GC judgment, no need to adjudicate (two cases), no legitimate interest (as the contested mark had already expired when the invalidity action was filed: T-254/22), one revocation of the decision by the EUIPO Board of Appeal (BoA) based on art. 103 EUTMR that was considered incorrect (T-519/22 – Nestlé (Fitness)). In two cases, the ground for the opposition had not been correctly indicated in the notice of opposition (T-758/21 and T-349/22 – Hacker Pschorr, where the opponent had only ticked the box for art. 8(1)(a) EUTMR and then relied on art. 8(1)(b) EUTMR, which was considered inadmissible).

It is not easy to figure out how often BoA decisions were reversed, but it appears that the **BoA's success rate** in the substantive cases was even higher than in previous years (in the 80% region).

Zooming in on **relative grounds cases**, more than 80 cases focused on the comparison of the signs. In 70% of these, the signs were considered similar.

In five cases, three of which were related (CERVIRON), opponents relied on non-registered signs. All of these oppositions were unsuccessful already before the BoA, and the GC upheld.

32 cases (again, based on Darts-ip) concerned **issues of genuine use**. In 18 of these, genuine use was confirmed – or at least the BoA criticized for not finding it. In only three cases, the BoA was annulled, which means that, according to the GC, the BoA normally gets it right with respect to use. Here is an overview over these cases:

Case, Name	Type	Use Y	Use N	BoA	
				Confirmed	Reversed
T-780/22 INCRUISES	Opp	X			X
T-52/23 SANTARRITA	Opp	X		X	
T-510/22 Tante Mitzi Caffè	Rev		X	X	
T-774/21 recycling device (Deutsche Pfandsystem)	Opp		X	X	
T-601/22 Optiva Meva	Rev		X	X	
T-350/22 GAME OF GLADIATORS	Opp		X	X	
T-45/22 YIPPIE!	Inv	X		X	
T-638/21 Tous bear device	Rev	X		X	
T-585/22 ARTRESAN	Rev	X		X	
T-325/22 Terylene	Opp	X		X	
T-27/22 th pharma	Opp	X		X	
T-645/22 CS JEANS (fig.)	Rev		X	X	
T-200/20 STONE BREWING	Opp	X		X	
T-63/22 BROOKS ENGLAND	Opp	X		X	
T-419/22 meDex (fig.)	Rev		X	X	
T-239/22 RIALTO	Rev		X	X	
T-437/22 bistro Régent (fig.)	Opp	X		X	
T-52/22 TEHA (fig.)	Opp		X	X	
T-60/22 TEHA	Opp		X	X	
T-549/21 ROCHEM (fig.)	Inv	X		X	
T-548/21 ROCHEM	Inv	X		X	
T-547/21 RTS Rochem Technical Services	Inv	X		X	
T-546/21 RTS Rochem Technical Services (fig.)	Inv	X		X	
T-35/22 SYRENA	Rev		X	X	
T-794/21 MOULDPRO	Rev		X	X	
T-408/22 SEVEN SEVEN 7 (fig)	Opp		X	X	
T-194/22 zelmotor (fig.)	Rev		X	X	
T-372/21 Sympathy Inside	Opp	X		X	
T-102/22 Gourmet (fig.)	Inv	X			X
T-552/21 CAMEL	Rev		X (cannot be denied based on BoA reasoning)		X
T-772/21 efbet (fig.)	Rev		X	X	
T-346/21 Gufic	Rev	X		X	

(Opp stands for opposition, Inv for invalidity, Rev for revocation action)

On the issue of weak marks, we have seen some interesting developments, but to say that there is a clear tendency in the GC's case law is saying too much. This topic deserves a post of its own and is therefore reserved for Part 2 of the retrospective – so stay tuned!

Oh – and you were curious about the title of this Part 1? Yes, YUPPIE celebrated a victory over YIPPIE!. The two were considered confusingly similar for pastry and confectionery, despite the arguable conceptual differences (T-45/22 of 6 September 2023).

More to come!

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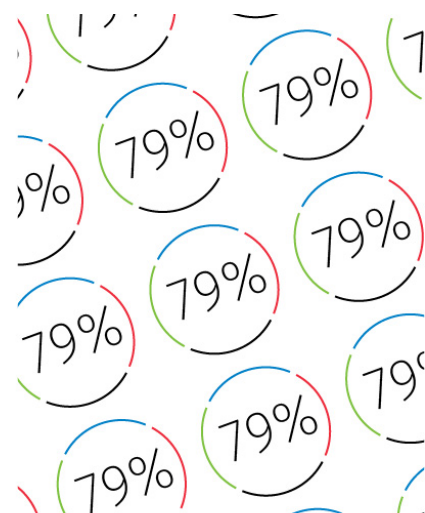
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