

Kluwer Trademark Blog

Chiquita Brands queens it over Jara 2000

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Chiquita Brands queens it over Red Queen – General Court, 29 May 2024, T-79/23



The General Court (GC) has annulled another Board of Appeal decision. That in itself is worth reporting as this happens in only about 15% of cases. The Court held that, contrary to the Board's decision, and despite both marks covering identical goods (fresh fruit), the EUTM consisting of the figurative mark Red Queen shown above was **not confusingly similar** to the word mark

CHIQUITA QUEEN.

The Board of Appeal had held otherwise. Assessing the case from the perspective of the Spanish speaking public, the Board considered that the term “Queen” was the most distinctive element of both signs and that, for this reason, its identical inclusion in both was enough to render them similar.

The Board based this on the following findings: “Chiquita” means “little girl” or simply “little” in Spanish and was therefore descriptive. “Red” means nothing in Spanish but was considered part of the basic English vocabulary understood also in Spain, and the colour red is descriptive for fresh fruit. The various additional figurative and verbal elements of the “Red Queen” mark, (the colours red and black, the red crown over queen, and the red circle with the inscription “FINCAS JARA 2000 TABIRANA”) were considered negligible. So, all the focus was on “QUEEN”.

The Court overturned this basically on two points:

- Firstly, the – undisputed – reputation of the CHIQUITA brand (also) in the EU including Spain meant that this term could not be considered weakly distinctive within the trademark applied for (§ 48).
- Secondly, “QUEEN” is not of normal distinctiveness but laudatory and therefore weak. The Board, which had recognised that KING would be understood by the average Spanish consumer

as being laudatory, considered that QUEEN would not be understood. The Court concluded this distinction to be incorrect, in particular in the context of “goods (fruit) which fall within the feminine gender in Spanish (‘las frutas’)” (§ 55).

It was therefore incorrect to conclude that the term “QUEEN” dominated the trademark applied for, CHIQUITA QUEEN, when in fact CHIQUITA was the most distinctive term.

The distinction made by the Board between “RED” and “QUEEN” assuming that one would be understood and the other not was indeed surprising. Having lived in Spain for almost 30 years, this author considers that Spaniards will either understand both or neither.

From a legal perspective, the most interesting statement is in § 47 of the judgment which reads:

It is necessary to distinguish between, on the one hand, the factor based on the distinctive character of the earlier mark, which is linked to the protection granted to such a mark and which is to be taken into consideration in the context of the overall assessment of the likelihood of confusion and, on the other, the distinctive character which an element of a composite mark may have, which is linked to its ability to dominate the overall impression produced by that mark and which must be examined from the stage of assessing the similarity of the signs.

In other words, while the reputation of the trademark applied for does not have an impact on the overall appreciation of likelihood of confusion, it does matter for the comparison of the signs. It appears that this is the first time the GC expressly recognises that the reputation of a part of the junior mark can have an impact on the similarity of the signs, namely, by shifting the relative weight balance to that part. This is an interesting (and welcome) change from the general rule that the reputation of the junior mark is entirely irrelevant in trademark oppositions – unless of course it’s the name of a celebrity (see, on this point, the earlier critical blog posts on [Messi](#) and [Miley Cyrus](#)).

The two earlier decisions that the GC refers to rather served to explain why the weakness of the earlier marks did not avoid confusion (the CJEU’s decision in case C-235/05 P on FLEX v. FLEXI AIR at § 43, and the General Court’s judgment in joined cases T-5/08 to T-7/08 on Golden Eagle and Golden Eagle Deluxe, § 65).

All in all, in this author’s view both an interesting development and a correct outcome.

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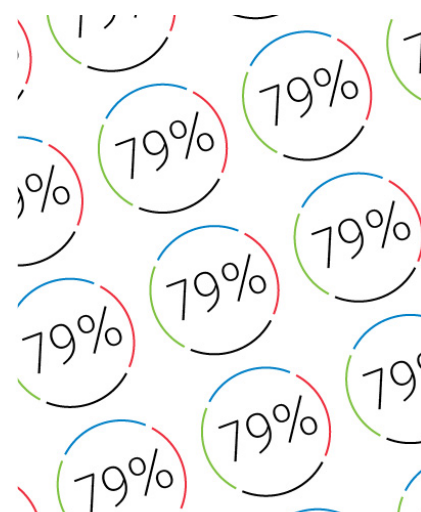
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“>General Court, weak

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