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## Spaniards confuse GEICAR and hey car select?

Verena von Bomhard (BomhardIP) · Thursday, May 29th, 2025



By judgment of 30 April 2025, the General Court of the European Union upheld the decision of the First Board of Appeal of the EUIPO finding a likelihood of confusion between the two figurative trademarks “GEICAR” and “hey car select” (Case T?338/24). The services at issue were car dealership, general business and marketing, and car rental services in classes 35 and 39.

The earlier mark was registered in Spain, the contested trademark (hey car select) was an EU designation under an IR. Like the Board, the Court recognized that the marks were visually and conceptually dissimilar-

However, it held that in Spain, “GEICAR” and “hey car” would be pronounced virtually identically. As regards the additional element “select” in the contested mark, the Court stated (at para. 69) that *“the importance [thereof] must be put into perspective due to its weak distinctive character”*. It therefore endorsed the finding of a high degree of aural similarity. The fact that also “car” is weakly distinctive in Spain for car dealerships (fact which the Court recognized) was not a part of this equation.

As regards the services, the earlier Spanish mark was registered (in essence) for wholesale and retail services relating to new and used cars, and for *“services provided by a franchisor, specifically assistance in the operation or management of industrial or commercial enterprises”*, all in class 35. For the purposes of the opposition proceedings, the earlier mark was not subject to use requirements and so the services of the registration had to be taken at face value. Similarly, there was no mention of a national non-use cancellation action ever having been filed against the earlier Spanish mark.

The car dealership and car rental services in classes 35 and 39 covered by the contested mark were identical or highly similar to those of the earlier mark. The general business services including office functions and advertising, marketing and promotional services were considered similar, at least to a low degree, to the broadly described franchisor services covered by the earlier mark.

Apparently, the holder of the contested mark did not dispute, and the Court also endorsed, the Board’s finding that *“particular importance should be given to phonetic similarity, since the*

*services at issue may be recommended and be the subject of oral advertising, in particular on the radio”* (para. 84 of the GC judgment). This may well be true for car dealers and car rentals, although it appears unlikely that any consumers make purchasing decisions relating to either based purely on “GEI / hey” heard on the radio. Moreover, radio commercials are rare if not non-existent for B2B services. PR agencies and the like do not usually advertise their services over the radio, and their brands are usually encountered visually (namely, on paperwork or on the web). Yet, neither the Board nor the Court differentiated between the services when assuming that all of them “may be the subject of oral advertising” and, for that reason alone, considering that the phonetic similarity alone could lead to confusion.

All in all, the Court concluded that there was a likelihood of confusion. The increased level of attention paid by customers for vehicles as well as by customers for business services such as advertising services or office functions did not prevent this.

The result seems counterintuitive – even though all three instances were aligned: already the Opposition Division had considered the marks to be confusingly similar. The case certainly reminds us how important it is to take into account local phonetics and that, at least in the EU, trademarks are often dissected into bits and pieces when assessing similarity, with similarity in certain aspects or isolated pieces only being enough to lead to a finding of likelihood of confusion.

“PS – With thanks to Madelene Bauer, currently intern at BomhardIP, for her valuable contribution!”

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