INTELLECTUAL PROPERTY

European Union: Adidas Ruling

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The General court of the European Union recently upheld a 2016 ruling by the EU regulator thereby cancelling Adidas EU trade mark registration comprising three stripes depicted as:

adidas

This trade mark was filed in 2014 and the registration thereof challenged by Belgian company, Shoe Branding Europe. The General court ruled that this trade mark lacked distinctive character and is instead an ordinary figurative mark. The court found that the evidence adduced did not sufficiently show that the consumer, on seeing this three stripe mark applied to clothing, footwear and headgear in the EU would associate the mark with Adidas.

This judgement demonstrates the firm stance adopted by the EU when assessing distinctiveness. Since a trade mark grants the proprietor exclusivity to a mark in relation to the goods and services for which it is registered – in this instance clothing, footwear and headgear in class 25 – the distinctiveness requirement is absolute. The manner in which the trade mark was registered requires particular consideration being three black vertical stripes. Although the court did not find in favour of Adidas in this instance, the ruling may have no effect on the broad scope of protection that Adidas already has on its well-known three stripes registered in various forms in Europe and elsewhere.

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