

Fresh air for the evergreen question of genuine use

T-144/24 of the European General Court

In its decision of 9 July 2025, T-144/24, the European General Court (EGC) gave some important guidance on the question of maintaining a trade mark where evidence of use is only provided for some of the goods specified in the list of goods and services.

The case

In 2009, the Applicant (Bouwbenodigheden Hoogeveen BV) filed a EU trade mark (word mark »BIENENBEISSER«) with EUIPO claiming protection for metallic air vents in class 6 and non-metallic air vents in class 19. In 2021, a request for revocation of that trade mark based on non-use was filed (by Sören Pürschel). The Cancellation Division of EUIPO upheld the trademark application in part, namely for metallic air vents in class 6, but revoked the trade mark for non-metallic air vents in class 19. The Applicant filed an appeal and then an action with the European General Court, claiming that it had made use for »air vents« in both class 6 and class 19.

The Applicant argued that the classification system was for administrative purposes only. Air vents serve to maintain the ventilation of buildings irrespective of whether they are made of metal or not. Thus, both share the same purpose and belong to a homogeneous category of goods so that evidence of use for the one should also be sufficient evidence of use for the other.



The decision

The Court found that although the Nice Classification is purely administrative, classification in different classes cannot be entirely ignored (margin numbers 27, 28). Instead, reference should be made to the classification system in order to assess the range and meaning of the products in question.

Where the description of the goods is so general that it may cover very different goods, it is possible to take into account the classes that the trade mark applicant has chosen. The headings of the classes must be interpreted from a systematic point of view having regard to the logic and the system inherent in the Nice Classification. At the same time, the descriptions and explanatory notes to the classes must be considered.

In the present case, it was apparent from the respective explanatory notes to the classes covered by that trade mark that class 6 includes metallic building materials and that class 19 includes non-metallic building materials.

According to the case law (Decision of 19 June 2018, Erwin Müller/EUIPO - Novus Tablet Technology Finland [NOVUS], T-89/17, not published, ECLI:EU:T:2018:353, margin number 33, see also Decision of 6 October 2021, Allergan Holdings France/EUIPO - Dermavita Company [JUVEDERM], T-397/20, not published, ECLI:EU:T:2021:653, margin number 35), where the grounds for revocation of rights exist in respect of only some of the goods for which the EU trade mark is registered, the rights of the proprietor are to be revoked in respect of those goods. However, this must be reconciled with the legitimate interest of the proprietor in being able in the future to extend the range of goods within the confines of the terms describing the goods for which the trademark was registered (margin number 33).

This is done by applying the principle of a homogeneous category of goods that works as follows. Goods that have been defined particularly precisely and narrowly and within which it is not possible to make any significant subdivisions, will be considered by the consumer as belonging to one category within the contested trade mark, such that that trade mark will fulfil its essential function of guaranteeing the origin of those goods (margin numbers 34, 39).

Accordingly, it is sufficient to require the proprietor of the mark to provide proof of genuine use of that trade mark in relation to only some of the goods within that homogeneous category in order to maintain the mark for the entire homogeneous category (margin number 34).

Therefore, it had to be noted that the Applicant had put forward arguments and submitted evidence demonstrating that metallic and non-metallic air vents have the same intended use and purpose, namely to prevent bees and other insects or vermin from entering the building while maintaining ventilation of those structures, irrespective of the material in which those vents were manufactured (margin number 40).

Thus, the trade mark was maintained for both, metallic air vents in class 6 and non-metallic air vents in class 19.

The consequences

The key take away from this decision is that the principle of a homogeneous category of goods also applies if the goods concerned have been registered in different classes, so that evidence of use for the one may be sufficient evidence of use for the other. This impacts not only the strategy in attacking or defending a trade mark in cancellation proceedings, but should serve as an important reminder to not overly limit preparatory searches before filing a trade mark by unduly limiting the number of classes the search is performed in.



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