

General Court considers classification of goods in Classes 7 and 8

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Legal updates: case law analysis and intelligence

- The EUIPO rejected applications for the revocation of two STAYER marks for “abrading instruments (hand instruments) (discs and wheels)” in Class 8
- The applicant for revocation argued that the mark owner had adduced evidence of genuine use only in respect of goods in Class 7, and not Class 8

- **The court held that “abrading discs and wheels” did fall within the category of “abrading instruments (hand instruments) (discs and wheels)” in Class 8**

On 30 November 2022 the General Court (Third Chamber) issued two decisions in *ZAO Korporaciya ‘Masternet’ v European Union Intellectual Property Office* (EUIPO) (Cases [T-85/22](#) and [T-155/22](#)).

Background

The applicant filed revocation actions against EU trademark registrations for the word mark STAYER and the figurative mark STAYER. The applications were directed at “abrading instruments (hand instruments) (discs and wheels)” in Class 8.

The Cancellation Division of the EUIPO rejected both applications for revocation and the applicant appealed.

The Board of Appeal of the EUIPO dismissed the appeals. In particular, it found that the evidence submitted by the intervener, Stayer Ibérica SA, showed genuine use of the contested marks in respect of “abrading discs and wheels”, which did fall within Class 8 and not in Class 7 (as argued by the applicant), which covers only “abrasive machines”.

The applicant filed an appeal before the General Court.

Appeal to the General Court

The applicant relied on a single plea in law, alleging infringement of Article 15 of Regulation 207/2009. More specifically, it submitted that the expression “abrading instruments (hand instruments) (discs and wheels)” should be understood as relating to hand-operated tools. According to the applicant, the intervener had adduced evidence of genuine use of the contested mark only in respect of “abrading discs and wheels”, which are accessories for power tools in Class 7, and not in respect of accessories for hand-operated tools in Class 8. In addition, the applicant claimed that most of the documents and invoices submitted referred to cutting discs which are not covered by the expression “abrading instruments (hand tools) (discs and wheels)”.

Decision

The court found that account must be taken of the fact that the contested mark covers “abrading instruments (hand instruments)”, which terms are immediately followed by the words “discs and wheels” in brackets. Therefore, the contested mark had been registered in respect of “discs and wheels” as such.

The court referred to its judgment of 28 May 2020 in [STAYER](#) (Case T-681/18), which concerned an application for partial revocation of the EU figurative mark STAYER, to the extent that it designated goods identical to those covered in the present case, namely “hand-held abrasive items (wheels and grinding wheels)” in Class 8.

It noted that it was apparent from the documents in the case file that the contested mark was filed in order to cover “abrading instruments (discs and wheels)”, falling within Class 8.

Therefore, by analogy with its findings in Case T-681/18, the court held that “abrading discs and wheels”, in respect of which the intervener had produced evidence of genuine use during the relevant period, did fall within the category of “abrading instruments (hand instruments) (discs and wheels)” in Class 8.

Further, the applicant’s argument that the evidence produced by the intervener showed genuine use only for the category of “cutting discs” - which, in its view, fell within a separate category from that of “abrading discs and wheels” - was unfounded. It noted that the abrading process encompasses, among other things, cutting, grinding or polishing. Consequently, even if all the evidence submitted by the intervener did in fact relate to “cutting discs”, these also fell within the general category of “abrading discs and wheels”.

Therefore, the court confirmed that the evidence submitted by the intervener proved genuine use for products in Class 8, and the applicant’s single plea in law was rejected as unfounded.

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