

World Trademark Review *Daily*

Likelihood of confusion found despite low degree of similarity
European Union - Klos Morel Vos & Schaap

Examination/opposition
International procedures

June 25 2012

In *Kabushiki Kaisha Seikoh Giken v Office for Harmonisation in the Internal Market* (OHIM) (Case T-519/10, June 13 2012), the General Court has upheld a decision of the Board of Appeal of OHIM in which the latter had found that, despite the low degree of similarity between the marks SG SEIKOH GIKEN and SEIKO, a likelihood of confusion existed.

Kabushiki Kaisha Seikoh Giken sought to extend protection of its international registration for the word and device mark SG SEIKOH GIKEN, depicted below, to the European Union.



Upon publication of the request for territorial extension in the *Community Trademarks Bulletin*, *Seiko Holdings Kabushiki Kaisha* filed an opposition with OHIM based on its earlier Community word mark SEIKO. Seiko argued that there was a likelihood of confusion within the meaning of Article 8(1)(b) of the *Community Trademark Regulation* (40/94), now the *Community Trademark Regulation* (207/2009).

Both the Opposition Division and the Board of Appeal of OHIM upheld the opposition.

Before the General Court, Seikoh Giken did not dispute the finding of the Board of Appeal that the relevant public consisted of average EU consumers who are reasonably well-informed, observant and circumspect; nor did it dispute the board's conclusion as regards the identity of the goods covered by the marks. Only the board's assessment regarding the similarity of the marks was contested - without success.

The General Court pointed out that, contrary to what Seikoh Giken argued, the board had not found that there was a likelihood of confusion solely on the grounds that the element 'seiko' was included in the mark applied for. Had that been the case, the board would not have concluded that the marks at issue were similar only to a low degree. In addition, the General Court stated that the board had been right not to compare the marks on a conceptual level, because neither of the marks has a clear and specific meaning in the languages of the European Union.

Consequently, taking into account the (undisputed) identical nature of the goods, the (undisputed) average degree of attention of the relevant public and the similarity - albeit weak - of the marks at issue, the General Court came to the conclusion that the board had not erred in finding that there was a likelihood of confusion within the meaning of Article 8(1)(b) of the regulation.

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