

**No likelihood of confusion between DM and figurative sign that will be perceived as stylised 'M'**

**European Union - Klos Morel Vos & Reeskamp**

**Examination/opposition  
International procedures**

July 10 2015

In *dm-drogerie markt GmbH & Co KG v Office for Harmonisation in the Internal Market* (OHIM) (Case T-662/13, June 25 2015), the General Court has upheld a decision of the First Board of Appeal of OHIM in which the latter had found that no likelihood of confusion existed between a figurative sign that would be perceived as a stylised representation of the letter 'M' and the earlier word mark DM.

*Diseños Mireia* applied for registration as a Community trademark of the sign depicted below, covering, among other things, precious metals, jewellery, precious stones and horological and chronometric instruments in Class 14 of the [Nice Classification](#).



*dm-drogerie markt* filed an opposition on the basis of the earlier Community word mark DM, covering jewellery, horological instruments and key fobs in Class 14.

The Opposition Division of OHIM rejected the opposition in its entirety and the Board of Appeal dismissed *dm-drogerie markt*'s appeal.

The General Court confirmed the Board of Appeal's findings that:

- the relevant territory was that of the European Union;
- the level of attention of the relevant public varied from rather high (as these products generally tend to be expensive) to average (where those goods are sold in cheap variations); and
- the goods in question were in part identical, in part similar and in part different.

These findings were, moreover, not disputed by the parties.

The fundamental question in this dispute was how the relevant public would perceive the sign applied for. The Board of Appeal based its conclusion that the marks at issue were dissimilar primarily on the premiss that the mark applied for would most probably be perceived as a stylised representation of the capital letter 'M'. *dm-drogerie markt* argued that the sign would be perceived as a stylised representation of the capital letters 'D' and 'M', in which the first of those letters is interlinked with the second.

The General Court confirmed the Board of Appeal's assessment, reasoning that there is normally no opening at the bottom of the capital letter 'D' and that the overall impression created by the mark is dominated by the mirrored side stems of the 'M'. The General Court dismissed *dm-drogerie markt*'s argument that the mark applied for would represent the initials of the trade name 'Diseños Mireia'. The comparison must be made between the signs as registered and applied for, and *dm-drogerie* did not in any way substantiate its premiss that the relevant public would associate the sign applied for with the name *Diseños Mireia*, which it could have done in particular by showing that that mark and that trade name are widely known.

Because the sign applied for would be perceived as a stylised representation of the letter 'M', the Board of Appeal was right to conclude that there was no visual similarity between the sign applied for and the earlier mark.

The General Court also found that the Board of Appeal was right to conclude that:

- it was unlikely that the public would attempt to pronounce the sign applied for – as a consequence of which the marks were phonetically dissimilar; and
- the signs could not be compared conceptually.

Having found that there was no similarity between the marks at issue, the Board of Appeal had been right to conclude that there was no likelihood of confusion, irrespective of the alleged enhanced distinctive character of the earlier mark.

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