

ETI Gıda Sanayi ve Ticaret AŞ

v

European Union Intellectual Property Office

Judgment of the General Court (Third Chamber) of 3 September 2025

(EU design – Invalidity proceedings – Registered EU design representing packaging – Earlier national figurative mark – Ground for invalidity – Use in the subsequent design of a distinctive sign the holder of which has the right to prohibit such use – Article 25(1)(e) of Regulation (EC) No 6/2002 – Rights of the defence – Scope of the examination carried out by the Board of Appeal)

1. *EU designs – Grounds for invalidity – Use of a distinctive sign in a subsequent design – Comparison between the contested design and the distinctive sign – Relevant public*

*(Council Regulation No 6/2002, Art. 25(1)(e))*

*(see paragraphs 37, 54)*

2. *EU designs – Grounds for invalidity – Use of a distinctive sign in a subsequent design – Use of a sign which is similar to the distinctive sign – Included*

*(Council Regulation No 6/2002, Art. 25(1)(e))*

*(see paragraphs 38-40)*

3. *EU designs – Grounds for invalidity – Use of a distinctive sign in a subsequent design – Comparison between the contested design and the distinctive sign – Likelihood of confusion*

*(Council Regulation No 6/2002, Art. 25(1)(e); European Parliament and Council Directive 2015/2436, Art. 10(2)(b))*

*(see paragraphs 42, 43, 45, 100)*

4. *EU designs – Grounds for invalidity – Use of a distinctive sign in a subsequent design – Comparison between the contested design and the distinctive sign – Similarity between the goods or services concerned – Criteria for assessment – Complementary nature of the goods or services*

*(Council Regulation No 6/2002, Art. 25(1)(e))*

*(see paragraphs 48-51)*

5. *EU designs – Grounds for invalidity – Use of a distinctive sign in a subsequent design – Comparison between the contested design and the distinctive sign – Design representing packaging – Figurative mark KRAX*

*(Council Regulation No 6/2002, Art. 25(1)(e))*

*(see paragraphs 53, 55, 56, 75, 80, 84, 90, 94, 99)*

Résumé

Dismissing the actions for annulment brought by Eti Gıda Sanayi ve Ticaret AŞ, the General Court rules for the first time on the applicable substantive law *ratione temporis* relating to EU designs, in particular

in the context of the proceedings provided for in Article 25(1)(e) of Regulation No 6/2002, ( [1](#) ) and clarifies the case-law deriving from that provision and the rules for its implementation.

Eti Gıda Sanayi ve Ticaret AŞ, the applicant, filed three applications for registration of designs with the European Union Intellectual Property Office (EUIPO): one on 13 July 2007 (*Eti v EUIPO – Star Foods E.M. (Packaging)* (Case T-92/24)) and two others on 28 October 2016 (*Eti v EUIPO – Star Foods E.M. (Decoration for bags of packaging)* (Case T-83/24) and *Eti v EUIPO – Star Foods E.M. (Decoration for bags of packaging)* (Case T-91/24)). Those designs represent, for the latter two registered designs, a decoration for bags of packaging and, for the former, packaging. The goods to which those designs are intended to be applied correspond to ‘bags [packaging] (ornamentation for)’ and ‘packaging’, respectively. ( [2](#) )

On 21 January 2019, Star Foods E.M. SRL filed two applications for declarations of invalidity for those designs with EUIPO on the ground that the use of the earlier national signs enabled it to prohibit the use of the distinctive signs in the contested designs. ( [3](#) ) Those applications were based on the earlier Romanian word mark KRAX and three Romanian figurative marks depicting the word element ‘krax’, all registered for ‘preparations made from cereals’. On 21 February 2020, Star Foods E.M. SRL filed a third application for a declaration of invalidity based on the Romanian figurative mark KRAX registered for goods such as ‘snack products, especially those made from cereals by expanding and extruding processes, with different flavours’.

The Cancellation Division upheld the three applications for declarations of invalidity. Subsequently, the applicant brought three appeals against those decisions before the Board of Appeal of EUIPO, which dismissed them, finding that the Cancellation Division was justified in declaring the contested designs invalid under Article 25(1)(e) of Regulation No 6/2002, read in conjunction with Article 36(2)(b) of the Romanian Law on trade marks, since there was a likelihood of confusion.

In that context, the applicant brought three actions before the General Court seeking the annulment of those decisions.

## ***Findings of the Court***

First of all, the Court finds that, in view of the date on which the applications for registration of the two designs representing a decoration for bags of packaging were filed, namely 28 October 2016, which is determinative for the purpose of identifying the applicable substantive law, the facts of the case are governed by the substantive provisions of Regulation No 6/2002 in its earlier version and the Romanian Law on trade marks in the version in force on that date.

Next, as regards the three designs concerned, it refers to the case-law on invalidity referred to in Article 25(1)(e) of Regulation No 6/2002 in its earlier version. Under that provision, a design may be declared invalid if a distinctive sign is used in a subsequent design and EU law or the law of the Member State governing that sign confers on the right holder of the sign the right to prohibit such use. According to case-law, an application for a declaration that a Community design is invalid that has been based on the ground for invalidity specified in that provision can succeed only if it is found that the relevant public will form the impression that use is made, in that Community design, of the distinctive sign relied on in support of the application for a declaration of invalidity. The examination of that ground for invalidity must be based on the perception by the relevant public of the distinctive sign relied on in support of that ground, as well as on the overall impression that the sign leaves in the mind of the public.

That ground for invalidity does not necessarily presuppose a full and detailed reproduction of an earlier distinctive sign in a subsequent Community design. Even though the contested Community design may lack certain features of the sign in question or may have different, additional features, this may constitute ‘use’ of that sign, particularly where the omitted or added features are of secondary importance. This is particularly the case where the public retains only an imperfect picture of marks registered in the Member States or EU trade marks. That applies to every type of distinctive sign. As a consequence, if a distinctive sign as used in a subsequent Community design lacks certain secondary features or has additional features, the relevant public will not necessarily notice those changes vis-à-vis the earlier distinctive sign. On the contrary, it may believe that the sign it remembers is being used in the subsequent Community design. It follows that Article 25(1)(e) of Regulation No 6/2002 in its earlier

version is applicable where use is made not only of a sign that is identical to that relied on in support of an application for a declaration of invalidity but also of a sign that is similar.

Furthermore, as regards the Romanian Law on trade marks, the Court finds that, in accordance with Article 36(2)(b) of that law, the proprietor of a trade mark may, in essence, request the competent judicial body to prevent third parties not having his or her consent from using in the course of trade any sign in respect of which, because of its identity with, or similarity to, the trade mark or the identity or similarity of the goods or services to which the sign is affixed, there exists a likelihood of confusion on the part of the public, including the likelihood of association between the sign and the trade mark. That provision constitutes the transposition into Romanian law of Article 10(2)(b) of Directive 2015/2436, (<sup>4</sup>) the wording of which is itself identical to Article 5(1)(b) of Directive 2008/95. (<sup>5</sup>) Therefore, the concept of ‘likelihood of confusion’ within the meaning of Article 36(2)(b) of that law must be interpreted in the light of the case-law relating to Article 5(1)(b) of Directive 2008/95 and to Article 10(2)(b) of Directive 2015/2436. More specifically, within the meaning of that provision, the risk that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically linked undertakings, constitutes a ‘likelihood of confusion’. The existence of a likelihood of confusion on the part of the public must be assessed globally, taking into account all the factors relevant to the circumstances of the case.

Lastly, in the light of those considerations, the Court notes that the present proceedings concern the scope of protection of a mark and, more specifically, the question whether the proprietor of that earlier mark may prohibit the use of its distinctive sign in the contested design. Accordingly, it does not take into account the impression conveyed to the informed user or the individual and novel character of the contested design, within the meaning of Articles 4 to 6 of Regulation No 6/2002.

Therefore, following its examination relating to the existence of a likelihood of confusion as to the commercial origin of the goods within the meaning of Article 25(1)(e) of Regulation No 6/2002 in its earlier version, read in conjunction with Article 36(2)(b) of the Romanian Law on trade marks, the Court holds that the Board of Appeal did not err in finding that there was such a likelihood.

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(<sup>1</sup>) Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs ([OJ 2002 L 3, p. 1](#)).

(<sup>2</sup>) Those goods fall within Classes 32.00 and 9.03 respectively of the Locarno Agreement Establishing an International Classification for Industrial Designs of 8 October 1968, as amended.

(<sup>3</sup>) Ground referred to in Article 25(1)(e) of Regulation No 6/2002, in its earlier version, read in conjunction with Article 36(2)(b) and (c) of lege nr. 84 privind mărcile și indicațiile geografice (Law No 84 on trade marks and geographical indications) of 15 April 1998 (*Monitorul Oficial al României*, No 337 of 8 May 2014; ‘the Romanian Law on trade marks’).

(<sup>4</sup>) Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks ([OJ 2015 L 336, p. 1](#)).

(<sup>5</sup>) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks ([OJ 2008 L 299, p. 25](#)).