

Berliner Verkehrsbetriebe (BVG)

v

European Union Intellectual Property Office

Judgment of the General Court (Second Chamber) of 10 September 2025

(EU trade mark – Application for an EU trade mark consisting of a sound of a melody – Absolute ground for refusal – Distinctive character – Article 7(1)(b) of Regulation (EU) 2017/1001)

1. EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Marks devoid of any distinctive character – Concept of distinctiveness

(European Parliament and Council Regulation 2017/1001, Art. 7(1)(b))

(see paragraphs 12, 13)

2. EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Marks devoid of any distinctive character – Assessment of the distinctive character – Criteria – Perception of the trade mark by the relevant public

(European Parliament and Council Regulation 2017/1001, Art. 7(1)(b))

(see paragraphs 14-18)

3. EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Marks devoid of any distinctive character – Sound mark consisting of a sound of a melody

(European Parliament and Council Regulation 2017/1001, Art. 7(1)(b))

(see paragraphs 24-38)

Résumé

In its judgment, the General Court annuls the decision of the Board of Appeal of the European Union Intellectual Property Office (EUIPO) ([1](#)) on the ground that the Board of Appeal did not correctly assess, in the light of Article 7(1)(b) of Regulation 2017/1001, ([2](#)) the distinctive character of an EU trade mark for which registration was sought in respect of a sound sign consisting of a sound of a melody.

The applicant, Berliner Verkehrsbetriebe (BVB), applied for registration of a trade mark consisting of a sound of a melody covering certain transport services. ([3](#)) Following the examiner's rejection of that request, the applicant filed a notice of appeal with EUIPO.

The Board of Appeal found that the mark applied for lacked distinctive character. Given that it was a two-second sound sign consisting of a simple sequence of four different perceptible sounds, that mark was so short and banal that it had no resonance or recognisability and was incapable of being recognised by consumers as an indication of the commercial origin of the services concerned. It would simply be perceived as a functional sound element intended to attract the listener's attention.

The applicant brought an action against that decision before the General Court.

Findings of the Court

The Court finds that several factors permit the inference that the characteristics of the mark applied for in terms of duration and resonance make it possible to establish the existence rather than the lack of distinctive character within the meaning of Article 7(1)(b) of Regulation 2017/1001 and the related case-law.

First, as regards the customs of the economic sector at issue, it is well known that operators in the transport sector increasingly use ‘jingles’, that is to say, short sound patterns, in order to create a sound identity recognisable by the public – an audio equivalent of the visual identity of a mark – for the goods and services associated with it. Those jingles allow the listeners’ attention to be captured in environments which can sometimes be noisy, such as in airport terminals or on the platforms of train stations, and to introduce or accompany messages addressed to the target public for advertising purposes or in connection with associated services.

Second, the sound of the melody of which the mark applied for consists does not have a direct link with the services covered and does not appear to be dictated by technical or functional considerations. In addition, it has not been established that that sound is already known to the public, which gives rise to the presumption that it is an original work. In that context, it may be considered that its purpose is rather to serve as a jingle, that is to say, as a short, striking sound sequence likely to be remembered. Moreover, that assessment is confirmed by EUIPO’s decision-making practice and the EUIPO examination guidelines in relation to sound marks, which may constitute a reference source.

In view of the characteristics of the mark applied for in terms of duration, melody used and perceptible sounds, and the various indications provided by EUIPO in the past regarding the role played by those characteristics in the assessment of the distinctive character of a sound mark for which registration is sought, the Board of Appeal’s assessment is incorrect in the light of both the customs of the sector concerned and the elements which characterise the mark applied for. Neither the duration of the mark applied for nor its alleged simplicity or banality, which does not in itself prevent the corresponding melody from being recognised, are obstacles which are sufficient, in themselves, to justify the lack of any distinctive character.

Third, the Board of Appeal erred in finding that the mark applied for had merely a functional role and that it was customary to play a short sequence of sounds before loudspeaker announcements providing information on means of transport in order to attract passengers’ attention. Even if it were necessary to envisage one of the potential uses of the mark applied for, that is to say, to refer to its use in a station to announce the associated transport service, such use, even if it has a functional role, would not in any way prevent the mark applied for from performing its function of indicating the commercial origin of that service.

Fourth, as regards the other services covered by the mark applied for, which did not directly concern transport, but aspects associated with it, the Court considers that it is difficult to understand from the Board of Appeal’s findings, first, to which aspects of those services the sound of the melody constituting that mark may be linked and, second, how the fact that the sound sign applied for may be used in advertising those services militates against its registration as a trade mark.

In the light of those considerations, the Court concludes that the Board of Appeal did not correctly assess the distinctive character of the mark applied for.

(1) Decision of the Fifth Board of Appeal of the European Union Intellectual Property Office of 2 April 2024 (Case R 2220/2023 5).

(2) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark ([OJ 2017 L 154, p. 1](#)).

(3) Those services fall within Class 39 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, corresponding to the following description: ‘Transport; passenger transport; wrapping and packaging services; storage; arranging of transportation for travel tours’.