

(Publication in extract form)

K-Way SpA

v

European Union Intellectual Property Office

Judgment of the General Court (Sixth Chamber) of 25 June 2025

(EU trade mark – Revocation proceedings – EU figurative mark representing five coloured parallel strips – Genuine use of the mark – Nature of use – Use in relation to goods in respect of which the mark is registered – Article 18(1)(a) and Article 58(1)(a) of Regulation (EU) 2017/1001)

1. EU trade mark – Surrender, revocation and invalidity – Grounds for revocation – Lack of genuine use of the mark – Proof of use of the earlier mark – Genuine use – Concept – Criteria for assessment – Requirement of solid and objective evidence

(European Parliament and Council Regulation 2017/1001, Arts 18(1)(a) and 58(1)(a))

(see paragraphs 22-24, 40)

2. EU trade mark – Surrender, revocation and invalidity – Grounds for revocation – Lack of genuine use of the mark – Proof of use of the earlier mark – Genuine use – Concept – Criteria for assessment – Company name, commercial name or shop name – Goods sold in stores bearing a shop name which corresponds to the mark – Limits

(European Parliament and Council Regulation 2017/1001, Arts 18(1)(a) and 58(1)(a))

(see paragraphs 33-37)

3. EU trade mark – Surrender, revocation and invalidity – Grounds for revocation – Lack of genuine use of the mark – Figurative mark representing five coloured parallel strips

(European Parliament and Council Regulation 2017/1001, Arts 18(1)(a) and 58(1)(a))

(see paragraphs 41, 48-50, 62, 63, 69, 70)

4. EU trade mark – Appeals procedure – Action before the EU judicature – Power of the General Court to alter the contested decision – Limits

(European Parliament and Council Regulation 2017/1001, Art. 72(3))

(see paragraphs 72, 75)

Résumé

In its judgment, the Court provides clarification concerning the application of the judgment in *Céline*, ([1](#)) as regards the use of a sign which is identical to an EU trade mark as a shop name.

Since 2006, K-Way SpA, the applicant, has been the proprietor of the EU figurative mark representing five coloured parallel strips in relation to many goods, ([2](#)) some of which correspond to the description ‘suitcases, briefcases, handbags, pocket wallets, purses, backpacks, school bags, shopping bags, vanity cases’ and ‘clothing, footwear, headgear’. In 2019, Mr Adorno Gubbini, the intervener, filed with the European Union Intellectual Property Office (EUIPO) an application for revocation ([3](#)) on the ground that that mark had not been put to genuine use in relation to all of the goods in respect of which it had

been registered. The Cancellation Division of EUIPO allowed his application in respect of almost all of the goods.

The applicant filed an appeal with the Board of Appeal of EUIPO, which upheld the action in part and annulled the decision of the Cancellation Division in so far as it concerned suitcases, pocket wallets and backpacks (⁴) and also clothing, excluding outdoor wear, and headgear, (⁵) in respect of which it found that genuine use of the mark at issue had also been proved.

The applicant therefore brought an action before the General Court to seek the annulment or alteration of that decision.

Findings of the Court

The Court recalls, in the first place, the case-law according to which use of the company name, the commercial name or a shop name may be regarded as a genuine use of the registered mark where the sign is affixed to the goods marketed or where, even if it is not affixed, that sign is used in such a way that a link is established between the sign which constitutes the company name, the commercial name or the shop name and the goods marketed or the services provided. (⁶) In that regard, the Board of Appeal was correct to find that the use of the mark at issue on the shop name of the applicant's single-brand stores was relevant in so far as it served to substantiate the use of that mark. However, the Court rejects the applicant's argument that, in the light of the evidence submitted, the Board of Appeal should have recognised an automatic link between the shop name and the goods marketed in the stores and found that the mark at issue is used for every product from those stores, whether or not the sign is visible on the goods themselves. The fact that goods are sold in stores bearing a shop name which corresponds to an EU trade mark is not sufficient, in all cases, to establish genuine use of that mark in relation to all of the goods concerned.

Next, the Court states that the applicant uses several marks in relation to the goods it markets and that fact may be capable of preventing the consumer from perceiving a link between the use of the mark represented on the stores' shop name and the goods, marketed in those stores, to which the mark concerned has not been affixed.

Lastly, the General Court finds that the Board of Appeal did not err in law or make an error of assessment when examining the evidence relating to the applicant's single-brand stores.

(¹) Judgment of 11 September 2007, *Céline* ([C-17/06](#), [EU:C:2007:497](#)).

(²) That included goods in Classes 18 and 25 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.

(³) On the basis of Article 58(1)(a) of 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](#)).

(⁴) Those goods are in Class 18.

(⁵) That category is in Class 25.

(⁶) Paragraphs 22 and 23 of the judgment in *Céline*.