

Judgment of the General Court (Sixth Chamber) of 22 October 2025

(EU trade mark – Opposition proceedings – International registration designating the European Union – Figurative mark CMS Italy – Earlier international figurative marks representing a feline bounding to the left – Relative ground for refusal – Injury to reputation – Article 8(5) of Regulation (EC) No 207/2009 – Strength of reputation – Obligation on EUIPO expressly to take into account the best-case scenario for the losing party before it – Duty of diligence)

1. *EU trade mark – Definition and acquisition of the EU trade mark – Relative grounds for refusal – Opposition by the proprietor of an earlier identical or similar mark enjoying a reputation – Extension of protection of the earlier mark with a reputation to dissimilar goods or services – Conditions – Reputation of the mark in the Member State or in the European Union – Concept – Criteria for assessment*
(Council Regulation No 207/2009, Art. 8(5))

(see paragraphs 25, 29, 30)

2. *EU trade mark – Definition and acquisition of the EU trade mark – Relative grounds for refusal – Opposition by the proprietor of an earlier identical or similar mark enjoying a reputation – Extension of protection of the earlier mark with a reputation to dissimilar goods or services – Conditions – Link between the marks – Criteria for assessment – Strength of the reputation of the earlier mark*
(Council Regulation No 207/2009, Art. 8(5))

(see paragraphs 27, 28, 56)

3. *EU trade mark – Proceedings before the adjudicating bodies of EUIPO – Opposition by the proprietor of an earlier identical or similar mark enjoying a reputation – Assessment of the strength of the reputation of the earlier mark – Use of expressions such as ‘at least’ or ‘at most’ – Obligation to take into account the best-case scenario for the losing party*
(Council Regulation No 207/2009, Art. 8(5))

(see paragraphs 31-37, 45)

Résumé

By its judgment, the General Court annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) ([1](#)) and states that EUIPO, in the assessments in which it uses expressions such as ‘at least’ or ‘at most’ and, in particular, the assessment relating to the strength of the reputation, must take into account the best-case scenario for the losing party before it.

On 21 December 2012, CMS Costruzione macchine speciali SpA designated the European Union in the context of the application for protection of the international registration of the figurative mark CMS Italy. On 21 November 2013, Puma SE, the applicant, filed a notice of opposition to that registration ([2](#)) on the basis of two earlier international figurative marks.

That opposition was rejected by the Opposition Division and the appeal subsequently brought by the applicant was dismissed by the Second Board of Appeal of EUIPO. Nevertheless, by order of 22 May 2019, the Court annulled that decision. ([3](#)) The case was therefore referred back to the Fourth Board of Appeal of EUIPO, which also dismissed the applicant’s appeal. That decision was also overturned by the Court. ([4](#))

Hearing the case, the Fifth Board of Appeal of EUIPO again dismissed the applicant's appeal, finding, inter alia, that, although the examination of the evidence submitted by the applicant showed that the earlier marks had 'at least' an average degree of reputation, the existence of a link between the marks at issue had not been established. The applicant therefore lodged an action for annulment of that decision before the Court.

Findings of the Court

First of all, the Court notes that, where, as in the present case, EUIPO examines the application of Article 8(5) of Regulation No 207/2009, it is not sufficient for it to find that the earlier mark has 'at least an average degree of reputation', but it is required either to determine precisely the degree of strength of that reputation, which is a relevant factor for the overall assessment of the link between the marks at issue, or expressly to take into account the best-case scenario for the losing party before it. It states that, in this context, the concept of 'losing party' refers to the party whose arguments concerning the strength of the reputation are rejected by EUIPO.

In that regard, the Court notes that EUIPO is not required to define a precise degree of reputation in all cases: in certain specific cases, it is open to EUIPO, in order to assess the strength of the reputation, to use expressions such as 'at least' or 'at most'. It is then for EUIPO expressly to take into account the best-case scenario for the losing party before it, before being able to reason a fortiori for the other less favourable scenarios for that losing party.

Thus, in cases where EUIPO concludes that there is no link or no injury to the reputation of the earlier mark at issue, it is open to it to classify the degree of reputation as 'at most' high, to take into account the maximum degree, namely the high degree, and to reason a fortiori for the scenarios less favourable to the losing party, which is the opponent, namely an average (or low) degree. By contrast, in such cases, EUIPO is not permitted to classify the degree of reputation as 'at least' average without expressly taking into account the best-case scenario for the opponent, such as a high, or even very high, degree of reputation. Conversely, where EUIPO concludes that there is a link between the marks at issue or injury to the reputation of the earlier mark at issue, it is open to it to classify the degree of reputation as 'at least' average, to take into account the minimum degree of reputation, namely the average degree, and to reason a fortiori for scenarios less favourable to the losing party, in this case the proprietor of the mark at issue, namely a high, or even very high, degree. Nevertheless, in such cases, EUIPO is not permitted to classify the degree of reputation as 'at most' high without expressly taking into account the best-case scenario for the proprietor of the contested mark, such as an average (or low) degree of reputation.

The failure to take into account the best-case scenario for the losing party is likely to vitiate the overall assessment of the existence of the link, in respect of which the strength of the reputation of the earlier mark is a relevant factor, or the overall assessment of whether there is injury to reputation.

Next, the Court adds that, more generally, where, in the context of any assessment, EUIPO chooses to use expressions such as 'at least' or 'at most', it must expressly take into account the best-case scenario for the losing party before it, namely the party whose arguments concerning the assessment in question it rejects. That obligation constitutes, for EUIPO, a particular statement of the duty of diligence, under which the relevant institution is required to examine carefully and impartially all the relevant factual and legal aspects of the case in question.

Lastly, the Court notes that, in the present case, the Fifth Board of Appeal did not expressly take into account the best-case scenario for the losing party, in this case the applicant, namely that of a 'very high' degree of reputation, in the overall assessment of the link between the marks at issue. It therefore concludes that it erred in law and annuls its decision in its entirety.

¹ Decision of the Fifth Board of Appeal of EUIPO of 4 July 2024 (Case R 2215/2019-5).

² The ground relied on was that set out in Article 8(5) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1).

³ Order of 22 May 2019, *Puma v EUIPO – CMS (CMS Italy)* (T-161/16, EU:T:2019:350).

