

EUROPEAN UNION



THE GENERAL COURT DISMISSES THE RESOLUTION ISSUED BY EUIPO'S BOARD OF APPEAL IN THE CASE "GRES ARAGÓN"

The General Court of the EU has just issued a decision dated December 18, 2019, within case T-624/18, that may be considered as particularly important due to the therein included criticisms concerning EUIPO's resolutions and the need to have them substantiated.

In the current case, EUIPO rejected trademark application GRES ARAGÓN, including a slight stylized lettering, for ceramic products in class 19. It was considered that said trademark was included in the prohibitions of article 7, paragraph 1, sections b) and c), and of Article 7, paragraph 2, of Regulation 2017/1001 EUTMR. The appeal filed by the applicant before the EUIPO was also supported by evidence showing the distinctive character acquired by the use of this sign, also rejected by the Board of Appeal, so that the applicant filed a further appeal this time before the General Court. EUIPO considered that the

filed trademark application included the words <<gres>> and << Aragón >> represented in slightly stylized capital letters, but perfectly understandable by the Spanish-speaking consumers as designating a ceramic material (grés) coming from the region of Aragon. As a consequence, the relevant public would not be able to appreciate the distinctive character of this trademark application.

In its Judgment of last December 18, 2019, the Court accepted the applicant's appeal, appearing the grounds set forth in said judgment to be of most importance at a general level.



In fact, the appellant firstly claimed that there were other already granted trademarks with basically identical or very similar structure (for example, the trademark GRES DE BREDÁ), and that said argument had not been contested by the Board. In this regard, the Court, while recognizing that previous administrative decisions do not bind the Board, recalls that Article 94 of Regulation 2017/1001 provides that EUIPO's decisions must be well grounded, and that according to the constant jurisprudence, said mandatory

motivation must clearly and correctly comprise the reasoning of the examiners in charge of the decision, in order to allow interested parties to know the grounds of the decision taken as well as to allow the corresponding Courts to exercise control. If this is added to the general principle of equal treatment in favor of trademark owners, the Court finally considers that indeed, as argued by the appellant, EUIPO improperly failed to respond to those allegations concerning the importance of the existence of previous trademarks.

Regarding the further arguments set forth in the appeal, same stress that EUIPO did not follow the rules established by its own examination guidelines. The Court considers that, in fact, and although said guidelines do not constitute mandatory legal lines for interpretation of EUTMR and that the decisions of EUIPO's Board of Appeal should be assessed only on the basis of Regulation 2017/1001, EUIPO must take into account the principle of equal treatment and therefore, must consider the decisions already rendered on similar conflicts, so that in case of not following the line of earlier decisions, it still may respect the principle of legality and examine the specific case strictly and completely, clearly justifying the reasoning of its decision.

Thus, the appeal has been accepted by the Court due to the fact that EUIPO has not been able to confirm the reason why in this specific case the region of Aragon may be considered as a well-known territory for the manufacturing of ceramic products.

To conclude, the importance of this decision is focused on the need of a proper substantiation of all the claims made by the parties as well as on the need to support the non-applicability of previous administrative decisions.