



11 Nov
2019

CJEU refuses to hear appeal in trademark case under new rules

European Union - [Herald](#)

- Under new rules that came into force in May 2019, an appeal against a General Court decision will not proceed unless the CJEU decides that it should be allowed to do so
- The appellant must demonstrate that the appeal raises an issue that is significant as to the unity, consistency or development of EU law
- In the present case, the CJEU decided for the first time that an appeal in a trademark case was inadmissible

The order of the Court of Justice of the European Union (CJEU) in [Wirecard Technologies GmbH v European Union Intellectual Property Office](#) (Case C-375/19 P) is interesting in that it is the first time that the new chamber of the CJEU that decides the admissibility of appeals has found that an appeal in a trademark case was inadmissible.

Background

Since May 2019, Article 58*bis* of the [Statute of the CJEU](#) provides that an appeal brought against a decision of the General Court concerning the decision of an independent board of appeal shall not proceed unless the CJEU first decides that it should be allowed to do so. Such decision is made by a special chamber of the court on the basis of a specific brief filed by the appellant containing only arguments regarding the admissibility of the appeal.

According to Article 170*ter* §3 of the [Rules of Procedure](#), the decision on the admissibility of the appeal must be motivated and the appeal shall be admitted only if the appellant demonstrates that the contested decision of the General Court raises an issue that is significant with regard to the unity, consistency or development of EU law.

In the present case, the appellant claimed that the appeal should be allowed to proceed since there had been an error in the assessment of the existence of a likelihood of confusion. More precisely, the appellant claimed that, in Paragraphs 32, 37, 54 and 61 of its decision, the General Court had departed, without any explanation, from previous case relating to the application of Article 8(1)(b) of Regulation 2017/1001, thus distorting the consistency of EU law.

Order

The chamber first stated that the appellant had not demonstrated that the General Court had departed from previous decisions and from the principles established by case law. It found that the General court had clearly explained how it had assessed the signs at issue under Article 8(1)(b) and the principles stemming from case law. The chamber noted that such reasoning had been provided in Paragraphs 30 to 32, 37, 53 to 55 and 61 to 63 of the General Court's decision.

The chamber added that, in any case, the General Court had explained the scope to be given to the various principles stemming from case law, and had highlighted the various elements distinguishing the signs at issue in this case from those mentioned in the cases quoted by the appellant.

Therefore, it concluded that the General Court's decision did not raise an issue that is significant with regard to the unity, consistency or development of EU law, and the appeal was found to be inadmissible.

Richard Milchior

Herald

TAGS

[Enforcement and Litigation](#), [European Union](#), [Europe](#)