

Emmentaler Switzerland

v

European Union Intellectual Property Office

Judgment of the General Court (Tenth Chamber), 24 May 2023

(EU trade mark – International registration designating the European Union – Word mark EMMENTALER – Absolute ground for refusal – Descriptive character – Article 7(1)(c) of Regulation (EU) 2017/1001 – Collective mark – Article 74(2) of Regulation 2017/1001 – Obligation to state reasons – Article 94 of Regulation 2017/1001)

1. *EU trade mark – EU collective marks – Signs or indications capable of designating the geographical origin of goods or services – Exception – Restrictive interpretation (European Parliament and Council Regulation 2017/1001, Arts 7(1)(c) and 74(2))*

(see paragraphs 11, 87)

2. *EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Separate examination of the various grounds for refusal – Overlap of the scope of the grounds set out in Article 7(1)(b) to (d) of Regulation 2017/1001 (European Parliament and Council Regulation 2017/1001, Art. 7(1))*

(see paragraphs 16-18)

3. *EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Marks composed exclusively of signs or indications capable of designating the characteristics of a product or service – Assessment of the descriptive nature of a sign – Criteria – Generic nature of a name (European Parliament and Council Regulations No 1151/2012, Art. 6(1), and 2017/1001, Art. 7(1)(c))*

(see paragraphs 22-25, 49-51, 71)

4. *EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Marks composed exclusively of signs or indications capable of designating the characteristics of a product or service – Word mark EMMENTALER (European Parliament and Council Regulation 2017/1001, Art. 7(1)(c))*

(see paragraphs 26, 81-83)

5. *EU trade mark – Procedural provisions – Statement of reasons for decisions – Scope – Recourse by the Board of Appeal to implicit reasoning – Statement of reasons by reference to another document – Whether permissible – Conditions (European Parliament and Council Regulation 2017/1001, Art. 94(1), 1st sentence)*

(see paragraphs 39, 40)

Résumé

The term ‘emmentaler’ cannot be protected as a European Union trade mark for cheeses

Emmentaler Switzerland obtained, from the International Bureau of the World Intellectual Property Organisation, the international registration of the word sign EMMENTALER for goods corresponding to the description ‘Cheeses with the protected designation of origin “emmentaler”’. (1)

That international registration was notified to the European Union Intellectual Property Office (EUIPO), but the examiner rejected the application for registration. (2) Emmentaler Switzerland therefore lodged an appeal, which was subsequently dismissed by the Second Board of Appeal of EUIPO, on the ground that the mark applied for was descriptive. (3)

By its judgment, the General Court rejects the action brought by the applicant against the Board of Appeal’s decision. In this case, it examines whether the Board of Appeal infringed Article 7(1)(c) of Regulation 2017/1001 by finding that the mark applied for is descriptive. In addition, it clarifies the link between Article 74(2) of that

regulation, concerning descriptive signs or indications which may constitute collective marks, and Article 7(1)(c) of that regulation, concerning descriptive marks.

Findings of the Court

First, as regards the descriptive nature of the mark applied for, the Court considers that, in the light of the evidence taken into account by the Board of Appeal, the relevant German public immediately understands the sign EMMENTALER as designating a type of cheese. Given that, in order for the registration of a sign to be refused, it is sufficient that the sign have a descriptive character in part of the European Union, which may be a single Member State, the Court holds that the Board of Appeal was entitled to conclude that the mark applied for is descriptive, without it being necessary to examine the elements which do not concern the perception of the relevant German public.

Secondly, as regards the protection of the mark applied for as a collective mark, the Court notes that Article 74(2) of Regulation 2017/1001 provides that, by way of derogation from Article 7(1)(c) of that regulation, signs or indications which may serve, in trade, to designate the geographical origin of the goods or services in question may constitute collective marks. That derogation must however be interpreted strictly. Accordingly, the scope of that derogation cannot cover signs which are regarded as an indication of the kind, quality, quantity, intended purpose, value, time of production or other characteristic of the goods in question, but only signs which will be regarded as an indication of the geographical origin of those goods. Since the mark applied for is descriptive of a type of cheese for the relevant German public and is not perceived as an indication of the geographical origin of that cheese, the Court concludes that it does not enjoy protection as a collective mark.

[1](#) Goods in Class 29 within the meaning 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.

[2](#) On the basis of Article 7(1)(b) and (c) 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), read in conjunction with Article 7(2) of that regulation.

[3](#) Within the meaning of Article 7(1)(c) of Regulation 2017/1001.