

Biomax = Metabiomax

English
case comment



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General Court, judgment of 11 June 2014 in Case T-62/13 – Biomax = Metabiomax

This decision made two interesting findings with regard to pharmaceutical trademarks. Firstly, the prefix “META” is a common element unable to attract consumer’s attention. Secondly, the high similarities between the signs and the products are sufficient to cause a likelihood of confusion without being necessary to assess the distinctive character of the prior trademark BIOMAX.

Background

This case concerns the Community trademark application METABIOMAX for products in classes 5, 16 and 30, which was opposed based on the prior Community trademark BIOMAX registered for products in classes 5, 30 and 32. Having regard to the goods covered by class 5, the OHIM Opposition Division acknowledged a likelihood of confusion in respect of “pharmaceutical products, dietetic substances for medical use, food for babies”. Upon appeal, the Board of Appeal endorsed that finding.

Decision

The General Court upheld the existence of the likelihood of confusion, thereby acknowledging the visual, phonetic and conceptual similarities arising from the reproduction of the verbal element “BIOMAX”. The court did not find it necessary to assess the distinctive character of the prior trademark. Moreover, according to the General Court, even though, the additional element “META” in the younger mark is situated at the beginning of the sign, this prefix will not attract the consumer’s attention more than the shared element “BIOMAX”, as “META” is a relatively common prefix.

Comment

This decision should be seen in light of two other decisions issued by the General Court on the same day regarding trademarks composed of the elements META and METABOL.

The first one is the decision in the case opposing the same METABIOMAX application based on the prior trademark METABIAREX (General Court, judgment of 11 June 2014 in Case T-281/13). The General Court reiterated its reasoning towards the prefix META being a common element which will not attract the consumer’s attention even placed at the beginning of the sign. The signs at stake are thus considered to be weakly similar. Nevertheless, applying the principle of interdependence between the various factors contributing to the finding of a likelihood of confusion, the signs were regarded to be too close due to the high similarity of the products at stake.

The second one is concerning the application METABOL, which was opposed based on the prior trademark METABOL-MG (General Court, judgment of 11 June 2014 in Case T-486/12). In said decision, the General Court confirmed a likelihood of confusion between the trademarks, as the additional element “MG” in the earlier mark only plays a minor role in its overall impression. It is noteworthy that the General Court acknowledged the likelihood of confusion despite of the weak distinctive character of the prior trademark.

As for the METABIOMAX/BIOMAX case, the General Court made an interesting point regarding the assessment of the distinctiveness of the prior trademarks. Indeed, in both cases the General Court, referring to its case-law FLEXI AIR (judgment of 13 December 2007 in Case T-112/03) and PAGESJAUNE.COM (judgment of 14 February 2008 in Case T-134/06), reminds that the distinctiveness of the prior trademark is only one of many factors to be taken into account when assessing the likelihood of confusion. Therefore, if the high similarities between the signs and the products are enough to cause a likelihood of confusion, it is not necessary to assess the distinctive character of the prior trademarks BIOMAX or METABOL. This last finding is a breath of fresh air for weakly distinctive trademarks especially in the pharmaceutical field, where trademarks may be, for marketing reasons, evocative of the active substance or the characteristic of the products.