

Antistax ≠ Angipax

English
case comment



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General Court, judgment of 10 February 2015 in Case T-368/13

The term “ANTI” is a prefix deriving from the Latin and being commonly understood by the relevant public including end consumers. The conceptual differences at the beginning of the signs ANTISTAX and ANGIPAX are thus immediately perceived and allow the public to distinguish the two marks, even without taking into account the differences between the suffixes.

Background

This case concerns the trademark application ANGIPAX covering various products in class 5 which was opposed based on the prior Community trademark ANTISTAX registered notably for pharmaceutical products. The OHIM Opposition Division denied any likelihood of confusion. It held that the visual and aural similarities between ANGIPAX and ANTISTAX were not enough to counteract the visual, aural and conceptual dissimilarities of the prefixes “ANGI” and “ANTI” as well as the differences between the suffixes “STAX” and “PAX”. The OHIM also held the elements “ANTI” and “ANGI” to be weak elements which are conceptually dissimilar. Indeed, even if the meaning of the prefix “ANGI” would not be understood by a part of the relevant public, the element “ANTI” is likely to be understood. The Board of Appeal confirmed the Opposition Division in denying likelihood of confusion. More particular, the Board upheld the findings concerning the conceptual differences, thereby noting that “the relevant public would clearly distinguish the non-medical prefix ‘ANTI’ from the component ‘ANGI’ which alludes to blood vessels in general or, more specifically, to the medical condition of angina.”

Decision

The General Court followed the OHIM’s reasoning:

Whilst the prefix “ANGI” could be understood as a reference to the blood vessels or angina condition, “ANTI” is a Latin prefix commonly understood and meaning “opposite, against”. The conceptual difference at the beginning of the signs is therefore immediately perceived and allows the public to distinguish the two trademarks easily. The General Court finally concludes that the common elements are not sufficient to justify the finding of an overall similarity, taking into account in particular the fact that the relevant public is composed of health professionals and average consumers who purchase healthcare products, who would both have a higher degree of attention.

Comment

The relevant public’s understanding of the prefixes “ANGI” and “ANTI” played a decisive role in this case. This is quite representative of pharmaceutical trademark case law. The Board of Appeal was, therefore, correct when it highlighted that in the context of pharmaceuticals, trademarks often have a similar structure, consisting of a combination of more or less meaningful prefixes and suffixes. Often, especially for medical goods having a similar purpose, i.e. to treat the same disease, the prefixes and suffixes used are partly the same, and they would be considered as weaker elements within the mark. It is also noteworthy that the Board held that consumers are accustomed to this practice and that they would thus focus more on the differences than on the similarities (Fifth Board of Appeal, decision of 29 April 2013 in Case R 571/2012-5 (Antistax/Angipax), para. 21). Indeed, the question whether the relevant public is able to understand the evocative meaning of a suffix or prefix is a key point when assessing the existence of a likelihood of confusion between pharmaceutical trademarks (see for example CJEU, judgment of 20 January in Case C-311/14 P - Menochron/Menodoron; GC, judgment of 9 April 2014 in Case T-501/12 - Pentasa/Octasa; GC, judgment of 10 December 2014 in Case T-605/11 - Biocef/Biocert).