International Trademark Association

Law & Practice

EUROPEAN UNION: The Question of Use in AUDI Case in Light of INTA's Amicus Brief

Published: June 5, 2024

Marina Perraki
Tsibanoulis & Partners
Athens, Greece
International Amicus Committee

Verifier

Angela Wenninger Lenz
Dorries, Frank-Molnia & Pohlman
Munich, Germany
International Amicus Committee

The facts in the decision of the Court of Justice of the European Union (CJEU) in *Audi AG v. GQ* (C-334/22) concerned the use of a mounting device shaped in the form of the AUDI figurative trademark  placed on non-genuine radiator grilles intended for AUDI cars. On the device the original emblem (logo) of AUDI was intended to be attached.

The CJEU considered in the first place, the third and fourth questions, relating effectively to whether the use constituted "use in the course of trade." If it did not, it would fall outside the scope of trademark protection, and an infringement assessment would be unnecessary. This is the approach that INTA also followed in its amicus brief.

INTA submitted to the CJEU that such use would be trademark use and constitute "use in the course of trade" insofar as the relevant consumers would perceive the radiator grilles bearing such mounting devices as originating from the trademark owner or with its consent.

INTA added that use affecting any of the trademark functions (origin, quality, advertising) is considered trademark use, including therefore even use that affects, for example, only the advertising function. The CJEU confirmed that the use at hand was use in the course of trade.

INTA went on to make a distinction, clarifying that what is critical is the encounter with the specific spare parts before the AUDI emblem is mounted on it because this is when consumers see the mounting element (afterwards the emblem is affixed on it).

The CJEU noted this too, stating in paragraph 40: "[T]hat element is placed on the spare part, namely the radiator grille, in such a way that, as long as the emblem representing the vehicle manufacturer's trade mark is not affixed, the sign identical with, or similar to, that trade mark is visible to the relevant public […]."

Lastly, INTA submitted that the repair clause exemption in Article 110(1) of the Community Design Regulation 6/2002 (EC) does not apply and is not relevant in the context of trademark law. The CJEU adopted the same position, precluding application by analogy, confirming prior CJEU case law.

On the first question, INTA started from the premise that it would need to be confirmed that such use may be considered as referential use, one that the user makes to inform that the spare part is intended for AUDI cars, before examining this question.

The CJEU also started from that point, clarifying that the use at hand is not referential use in the sense of Article 14(1)(c) EUTMR. INTA had also submitted this is not referential use because "the use in question would not be one […] necessary in order to indicate the intended purpose of the product, namely to denote that it is an accessory or spare part for Audi cars."

Topics Use | Europe: European Union | Automotive | Figurative Marks