

# World Trademark Review *Daily*

**Visual contact with marks predominates for everyday consumer goods  
European Union - Bugnion SpA**

**Cancellation  
International procedures**

April 29 2010

In *Cabel Hall Citrus Ltd v Office for Harmonization in the Internal Market* (OHIM) (Case T-488/07, April 15 2010), the General Court has upheld decisions of the Cancellation Division and the First Board of Appeal of OHIM finding that there was no likelihood of confusion between the trademark EGLÉFRUIT and the earlier mark UGLI FRUIT.

Casur SC Andaluzá registered the word sign EGLÉFRUIT as a Community trademark (CTM) for goods in Classes 29, 30 and 31 of the [Nice Classification](#). *Cabel Hall Citrus Ltd* subsequently filed an application for a declaration of invalidity of the mark based on, among other things, the earlier mark UGLI FRUIT – BUT THE AFFLICTION IS ONLY SKIN DEEP (with bulldog and citrus fruit design) for goods in Class 31.

The Cancellation Division dismissed the application and the First Board of Appeal upheld the decision. *Cabel* appealed to the General Court. Neither party denied the identity of the goods covered by the marks in Classes 29 and 31. Only the Board of Appeal's assessment of the similarity of the marks and of the likelihood of confusion was disputed.

The General Court first pointed out that, due to the weak distinctive character of the element 'fruit', the dominant elements of the marks were 'eglé' and 'ugli'. However, the General Court stated that:

*“although it is appropriate to take into consideration the distinctive and dominant elements, [...] no element can be totally ignored because of its low degree of distinctiveness. [...] It therefore cannot be accepted, contrary to the applicant's claim, that the element 'fruit' in the contested mark can be disregarded.”*

The court further held that, even though the elements 'eglé' and 'ugli' were phonetically similar to a certain extent, the likelihood of confusion was low. The court pointed out that phonetic similarity is simply one of the factors for the purposes of the global assessment of the likelihood of confusion.

Moreover, the court stated that visual contact with the marks predominates in respect of everyday consumer goods. Therefore, the visual differences between the marks outweighed the phonetic similarity. The figurative elements of the UGLI FRUIT mark (a bulldog resting on a citrus fruit), along with the phrase “but the affliction is only skin deep”, were sufficient to convince the court that the overall impression of the marks was different. The court agreed with the Board of Appeal that the figurative elements had a crucial importance, as they were “predominantly positioned in the earlier mark, the representation of the dog having a high degree of distinctiveness in relation to the goods at issue”.

Therefore, the eye-catching figurative elements, together with the phrase “but the affliction is only skin deep”, allowed consumers to identify the source of the goods. The action as a whole was dismissed.

*Vincenzo Melilli and Marcella Florio, Bugnion SpA, Milan*

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