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CANNABIS held to be descriptive of alcoholic beverages
European Union - Bugnion SpA

Cancellation
International procedures

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In *Torresan v Office for Harmonization in the Internal Market (OHIM)* (Case T-234/06, November 19 2009), the Court of First Instance (CFI) has held that consumers who purchase alcoholic beverages bearing the trademark CANNABIS would probably do so because they believe that the goods contain cannabis and seek the same sensations as those obtained during the consumption of cannabis.

In 2005 the Cancellation Division of OHIM declared that the trademark CANNABIS, which is owned by Giampietro Torresan, was invalid for beers, wines and spirits on the grounds that it was descriptive under Article 7(1)(c) of the [Community Trademark Regulation \(40/94\)](#) (now [Regulation 207/2009](#)). In 2006 the Second Board of Appeal of OHIM affirmed. Torresan appealed to the CFI.

Before the CFI, Torresan argued that the CANNABIS mark had distinctive character because:

- it had no connection - even indirect - with beverages; and
- it might be considered as a fanciful sign.

In addition, Torresan contended that the use of cannabis in beverages would be illegal in the European Union. As a consequence, the CANNABIS mark:

- was merely a suggestive sign which conveyed the idea of relaxation; and
- had no direct conceptual link with the goods at issue.

First, the CFI found that the word 'cannabis' has three possible meanings - namely:

- a textile plant, whose production is strictly regulated (the content of tetrahydrocannabinol, the active ingredient of cannabis, may not exceed 0.2%);
- a narcotic, which is prohibited in many EU member states;
- a substance, the possible therapeutic use of which is under discussion.

Against this background, the CFI held that cannabis was legally used - to a certain extent - as an ingredient in the production of foodstuffs and beverages. Therefore, the issue was whether the average consumer, who is reasonably well informed, observant and circumspect, would believe that the CANNABIS mark describes the characteristics of the goods in question.

The CFI reiterated that, according to settled case-law, a sign will be found to be descriptive if there is a sufficiently direct and specific relationship between the sign and the goods in question to enable the relevant public immediately to perceive a description of one of the characteristics of the goods (see, eg, *EUROPIG* (Case T-207/06)). Moreover, the fact that a mark has different meanings is irrelevant - the mark will be found to be descriptive if there is a direct and specific relationship between one of the meanings and the goods.

In the present case, the CFI concluded that the CANNABIS mark went far beyond the realm of suggestion and should be regarded as descriptive. The action was thus dismissed.

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