

TRADE MARKS IN THE EUROPEAN UNION - THE BALLON D'OR CASE

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Abstract: In the context of the intensification of economic and cultural integration, the transnational trade mark system of the European Union (EU) is adjusted and adapted to each challenge. Thus, the challenge to the EU's multilingual approach is clear since the Community trade mark should provide a common representation to EU consumers and provide protection to the proprietor of a trade mark.

In this paper, we analysed the Ballon d'Or case seen as a point of contact between EU intellectual property law and sports. The Ballon d'Or is widely known as the reward given to the best professional footballer of the season. Due to the fact that it is universally known not only to sportsmen, but also to the general public, this trade mark enjoys a very high reputation linked to the world of sports.

Our interest was focused on the solutions offered by the Court of Justice of the European Union relating to the requests of the involved parties - the French company which registered the earlier Community word mark BALLON D'OR and the UK company which registered the Community word mark GOLDEN BALLS.

The approach of the EU courts in the Ballon d'Or/Golden Balls case sets a reminder for the assessment of the existence of conceptual similarity between two distinct signs in two different languages if they have the same or a similar meaning.

Keywords: sports law; Ballon d'Or; Golden Balls; EU trade marks; Court of Justice of the European Union.

Introduction

Trade marks are considered a form of intellectual property and are protected by intellectual property rights. The World Intellectual Property Organization (WIPO) defines the term *trade mark* as "a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises" (WIPO, n.d.) and "recognizes the source company's ownership of the brand" (Tardi, 2022).

In the European Union, trade marks are managed by The European Union Intellectual Property Office (EUIPO). According to EUIPO (n.d.), there is a four-tier system for registering trade marks: at a national level via national EU IP offices; a regional level registration in Belgium, the Netherlands and/or Luxembourg via the Benelux Office of Intellectual Property (BOIP); for EU-wide protection (in all EU Member States) via the European Union Intellectual Property Office (EUIPO); an International registration via The World Intellectual Property Organization (WIPO). The first three systems are complementary, and work in parallel with each other. For proprietors who do not want or need protection of their trade marks at EU

level, the trade marks can be registered only at a national and regional level. However, EU trade marks give protection in all Member States of the Union (EUIPO, n.d.).

Some of the benefits of registering a European Union trade mark are: one registration procedure in one language gives the proprietor a trade mark that is valid in all EU countries for 10 years, and it can be renewed indefinitely, 10 years at a time; the registration builds an asset and establishes an exclusive right in all EU countries; the registration defends the proprietor against rival marks and protects them against counterfeiting and fraud by being able to take legal action (EUIPO, n.d.).

In this paper, we decided to analyse the controversies in the intellectual property law field, specifically the area of EU trade marks, based on the Ballon d'Or/Golden Balls case law of the European Court of Justice. The Ballon d'Or is widely known as the reward given to the best professional footballer of the season. Due to the fact that it is universally known not only to sportsmen, but also to the general public, this trade mark enjoys a very high reputation linked to the world of sports.

The History of the Ballon d'Or Case

In 2002, a British couple established a company named Golden Balls Ltd. In 2007, they filed two applications for the registration of the word mark “GOLDEN BALLS” as a community trade mark in the European Union. The two applications covered the products and services in six classes of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and later gave rise to the judgments in Case T-448/11 and Case T-437/11 respectively (Wei, 2015).

Intra-Press, the French company which organises the Ballon d’Or (an award given to the best footballer of the year, also known as the European Footballer of the Year Award), filed notices of opposition against those applications based on Community word mark No 4 226 148 (Court of Justice of the European Union, 2014). The oppositions were both applications based on the registration in 2006 of an EU trade mark with the European Union Intellectual Property Office [EUIPO; formerly known as the Office for Harmonization in the Internal Market (OHIM)] in respect of the word sign “BALLON D’OR”, the French for ‘golden ball’. The products and services of the Nice Agreement “covered by BALLON D’OR and those by GOLDEN BALLS [were] partly identical, partly similar and partly dissimilar, as agreed by both parties” (Wei, 2015).

Regarding the events that took place in 2007, Golden Balls Ltd filed two applications for the registration of the word mark “GOLDEN BALLS” with OHIM in classes 9, 28, 41, and classes 16, 21, 24 of the Nice Agreement. However, in 2008, Intra-Press filed oppositions based on its earlier Community trade mark “BALLON D’OR”, which was registered in classes 9, 14, 16, 18, 25, 28, 38 and 41, under Article 8(1)(b) and Article 8(5) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark [no longer in force; replaced by Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark]. Two years later, in 2010, the Opposition Division (of OHIM) rejected the oppositions,

reasoning that there was no likelihood of confusion between the two marks under Article 8(1)(b), and that Article 8(5) was not applicable in this case. In the same year, Intra-Press filed a notice of appeal (Case R 1310/2010-1) with the First Board of Appeal of OHIM and based its claims upon Articles 8(1)(b) and 8(5) of the Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark. According to Bellan (2015, p. 394), “while the marks were visually and phonetically different, the Board of Appeal found that the ‘Golden Balls’ and ‘Ballon d’Or’ signs were conceptually identical or at the least extremely similar”. However, the Board of Appeal only considered Article 8(1)(b), consequently dismissing Intra-Press’s claims as regards some goods in class 9 and all of the goods in class 21 and class 24, and found that there was a likelihood of confusion or association with respect to the identical goods and services in classes 9, 16, 28 and 41.

As for the applications for annulment filed with the General Court, which are known as the judgments: T-448/11 [Golden Balls v OHIM - Intra-Press (GOLDEN BALLS)] and T-437/11 [Golden Balls v OHIM - Intra-Press (GOLDEN BALLS)], the General Court of the European Union annulled the decisions of the First Board of Appeal of OHIM - Case R 1432/2010-1 and Case R 1310/2010-1, regarding the opposition proceedings between Intra-Press and Golden Balls Ltd.

By its judgment [T-437/11, Golden Balls Ltd (applicant) against OHIM (defendant) and Intra-Press (intervener before the General Court)], the General Court upheld the applicant’s plea alleging infringement of Article 8(1)(b) - Relative grounds for refusal - *“Upon opposition by the proprietor of an earlier trade mark, the trade mark applied for shall not be registered: if because of its identity with, or similarity to, the earlier trade mark and the identity or similarity of the goods or services covered by the trade marks there exists a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected; the likelihood*

of confusion includes the likelihood of association with the earlier trade mark”.

Also, during the proceedings before the General Court, it was concluded that the relevant public would not find the marks similar in a confusing way. The same court “recognised that it cannot be ruled out that a mere conceptual similarity between two marks can create a likelihood of confusion where the goods are similar, if the earlier mark has a highly distinctive character. However, here there was only a very weak conceptual similarity requiring prior translation” (Lehr & Clarke, 2015).

In case T-448/11 - Golden Balls Ltd (applicant) against OHIM (defendant) and Intra-Press (intervener before the General Court), the applicant brought an action against the decision of the First Board of Appeal of OHIM of 22 June 2011 (Case R 1432/2010-1), regarding the opposition proceedings between Intra-Press and Golden Balls Ltd.

The General Court demonstrated that the Board of Appeal of OHIM had been wrong “to find the existence of a likelihood of confusion on the part of the relevant public for the identical or similar goods and services covered by the signs at issue in classes 9, 28 and 41 [of the Nice Agreement], with the exception of apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity in class 9”. Moreover, because the signs at issue were in different languages (English and French), “a manifest distinction was created between them so that the average consumer would not immediately associate them without undergoing an intellectual process of translation” (paragraph 60, case T-448/11). Thus, as mentioned in paragraph 61 of the case, the court decided that the contested decision had to be annulled “to the extent of point 1 of its operative part, in so far as it [had] annulled the decision of the Opposition Division and [had] upheld the opposition for the goods and services covered by the mark applied for in classes 9, 28 and 41 with the exception of apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity in class 9”, on the basis

of breach of Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark - codified version [no longer in force; replaced by Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (codification)].

Judgments of The Court of Justice of the European Union in Joined Cases C-581/13 P and C-582/13 P

By the appeal (joined cases C-581/13 P and C-582/13 P - Intra-Press SAS v OHIM and Golden Balls Ltd), the applicant Intra-Press SAS sought to have set aside the judgments T-448/11 [Golden Balls v OHIM - Intra-Press (GOLDEN BALLS)] and T-437/11 [Golden Balls v OHIM - Intra-Press (GOLDEN BALLS)], in which the General Court of the European Union annulled the decisions of the First Board of Appeal of OHIM - Case R 1432/2010-1 and Case R 1310/2010-1, regarding the opposition proceedings between Intra-Press and Golden Balls Ltd.

In this case, the Court of Justice of the European Union “was required to determine whether the General Court had correctly assessed [in case T-448/11] the degree of similarity required between trademarks for the purposes of applying Article 8(5) of the CTM [Community Trade Mark] Regulation” (International Trademark Association, 2015, p 576).

The General Court held that the mark GOLDEN BALLS was different from the earlier registered mark BALLON D’OR in both visual and phonetic terms. The same court also noted the differences between the two marks at issue: “such as the fact that one mark is in the plural whereas the other is singular; the fact that the term GOLDEN is at the beginning of one mark, whereas the corresponding element D’OR is at the end of the other; the fact that ‘ballon’ can mean ‘balloon’ as well as ‘ball’; and the fact that the word ‘gold’ has a different linguistic origin from the French word ‘or’” (International Trademark Association, 2015, pp. 576-577). So, as stated in paragraph 51 of case T-448/11, there was “no visual or

phonetic similarity between the signs at issue and, at most, a weak conceptual similarity, requiring prior translation”.

As regards the use of plural as a distinctive matter, Olson (2013) noted that “it concerned a basic grammatical point which is also capable of being understood and perceived by the francophone public, particularly because the plural of words is formed in the same way in English and in French, namely with an ‘s’”. Thus, an average consumer, especially a francophone consumer, who would have a limited knowledge of English, but sufficient to understand the words ‘golden’ and ‘balls’, would be able to notice the use of the plural in this case.

Fhima and Gangjee (2019, p. 60) also explained that “syntactical differences inherent in the relevant languages can reduce the level of conceptual similarity”. Consequently, the General Court and the CJEU both found that, although French speakers would understand the meaning of “Golden Balls”, while English speakers would understand “Ballon d’Or”, taking into account that the word order is different and that the terms are not exact equivalents (Ballon d’Or means ‘ball of gold’, rather than ‘golden balls’), there was a weak conceptual similarity. So, the General Court decided that there was no likelihood of confusion between the marks at issue for the purposes of Article 8(1)(b) and the CJEU confirmed this analysis. As regards Article 8(5) of Regulation No 207/2009, the General Court, in paragraph 72 of case T-448/11, referred to its own assessment of similarity under Article 8(1)(b) in order to support the finding that “the signs at issue [lacked] the similarity required for the purposes of applying Article 8(5)”.

However, the CJEU found that the General Court had erred in law regarding the application of Article 8(5) of Regulation No 40/94 which states that: *“upon opposition by the proprietor of an earlier trade mark [...], the trade mark applied for shall not be registered where it is identical with or similar to the earlier trade mark and is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered, where in the case of an*

earlier Community trade mark, the trade mark has a reputation in the Community and, in the case of an earlier national trade mark, the trade mark has a reputation in the Member State concerned and where the use without due cause of the trade mark applied for would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark”.

According to Bellan (2015, p. 394), the General Court “erred to the extent that it had applied the same criteria to assess similarity under Article 8(1)(b) and Article 8(5) of the CTMR [Community Trade Mark Regulation], inferring from the lack of similarity between the signs at issue for the purposes of Article 8(1)(b) that the application of Article 8(5) had had to be excluded”. The CJEU pointed out that the degree of similarity required under Article 8(1)(b) and Article 8(5) needed to be assessed differently. Also, as mentioned in paragraph 72 of the judgment, “the implementation of the protection provided for under Article 8(1)(b) of Regulation No 40/94 is conditional upon a finding of a degree of similarity between the marks so that there exists a likelihood of confusion between them on the part of the relevant section of the public, the existence of such a likelihood is not necessary for the protection conferred by Article 8(5) of that regulation”. In the case of the latter article, as explained by Bellan (2015, p. 394), “a lower degree of similarity is required to trigger the protection of trade marks with a reputation under Article 8(5), such similarity existing whenever the relevant public made a connection between those marks or established a link between them”. The CJEU also stated, in paragraph 73 of cases C-581/13 P and C-582/13, that Article 8(5) of Regulation No 40/94, just as Article 8(1)(b), is “manifestly inapplicable where the General Court rules out any similarity between the marks at issue”. However, because the General Court concluded that the two marks at issue were slightly similar on a conceptual level, it had erred in law having ruled out the application of Article 8(5). The court should have ascertained if that low degree of similarity was still sufficient for the relevant public to establish a link between the

marks at issue, taking into account the presence of other relevant factors such as the reputation or recognition enjoyed by the earlier mark (paragraph 73, cases C-581/13 P and C-582/13).

Therefore, even if the General Court found “that those signs were not at all visually or phonetically similar, it also found that there was a low degree of conceptual similarity between them”, as stated in paragraph 75 of cases C-581/13 P and C-582/13. Thus, as mentioned in the same paragraph, “the General Court did not, in those judgments, rule out all possibility that the marks at issue were similar”. In this situation, the General Court was wrong to rule out the application of Article 8(5) of Regulation No 40/94 and was also wrong to reject the opposition concerning the goods and services in class 9, class 21 and class 24 of the Nice Agreement.

Regarding the Board of Appeal of OHIM, it found that the signs at issue were similar and that there was a likelihood of confusion, so it decided not to examine the pleas raised by Intra-Pressé based on Article 8(5). However, the CJEU noted “that obligation to examine the merits of the appeal must be understood as meaning that the Board of Appeal was obliged to decide on each of the heads of claim submitted for its consideration in order to give a decision on the oppositions by either rejecting them or declaring them to be founded, thereby either upholding or reversing the decisions of the Opposition Division contested before it”, as mentioned in paragraph 84 of the case. Thus, the Board of Appeal failed to fulfil its obligation to conduct another examination of the merits of the oppositions filed by Intra-Pressé.

In this case, the CJEU decided to set aside the two judgments of the General Court “to the extent that they dismissed the two applications for annulment submitted by Intra-Pressé SAS” and to annul “point 2 of the operative part of the decision of the First Board of Appeal of OHIM (Case R 1432/2010-1) and point 2 of the operative part of the decision of OHIM (Case R 1310/2010-1)”.

Case T-8/17 Golden Balls v EUIPO - Les Éditions P. Amaury (GOLDEN BALLS)

Judgment of the General Court - Case T-8/17 between Golden Balls Ltd v European Union Intellectual Property Office (EUIPO) and Les Éditions P. Amaury regarding an action brought against the decision of the First Board of Appeal of EUIPO of 30 September 2016 (Case R 1962/2015-1), relating to the opposition proceedings between Intra-Pressé and Ms. Inez Samarawira.

In 2007, Ms. Samarawira submitted an application for registration of an EU trade mark to EUIPO, for the word mark GOLDEN BALLS, under Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

As mentioned in paragraph 3 of this judgment, the goods and services in respect of which the registration was requested were in classes 9, 28 and 41 of the Nice Agreement.

In 2008, Intra-Pressé SAS lodged an opposition, under Article 42 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, to the registration of the mark applied for all the products and services referred to in paragraph 3. This opposition was based on the earlier EU word mark BALLON D'OR, designating the goods and services falling within classes 9, 28 and 41. The opposition was based on Article 8(1)(b) and Article 8(5) of Regulation No 40/94. At the same time, Intra-Pressé argued that the earlier mark enjoyed a reputation for sporting competitions, organization of sports competitions and awarding of trophies and that it was well known for sporting contests. In the same year, Ms. Samarawira transferred the EU trade mark application to the applicant, Golden Balls Ltd.

By the document lodged at the Court Registry in February 2017, the intervener, Les Éditions P. Amaury, requested to replace Intra-Pressé, within the meaning of Article 174 of the Rules of Procedure of the EU's General Court, given that Intra-Pressé had been removed from the French trade and companies register in December 2016 due to an absorption merger by the intervener.

In September 2016, as regards the contested decision, “the First Board of Appeal of EUIPO dismissed the applicant's appeal,

upheld the request for amendment submitted by Intra-Pressé and rejected the request for registration for the goods and services for which the Opposition Division had rejected the opposition in its second decision” (paragraph 26, case T-8/17).

By the application lodged at the Court Registry in January 2017, the applicant brought this action. As mentioned in paragraph 40 of the case, the applicant put forward four pleas-in-law: “the first claimed a breach by the Board of Appeal of the authority of *res judicata*; the second plea claimed that the Board of Appeal exceeded the subject matter of the action before it and the breach of their rights of defence; the third plea alleged that the Board of Appeal did not take account of developments after the filing of the application for registration of the EU trade mark; the fourth plea was about the infringement of Article 8(5) of Regulation (EC) No 40/94 by the Board of Appeal”.

With regard to the second part of the second plea, the applicant criticized the Board of Appeal for having closed the procedure without giving them the opportunity to submit their observations on the application submitted by Intra-Pressé, thus depriving them of their rights of defence (paragraph 55 of the case). The General Court showed, in paragraph 61, that “the applicant [had] not [been] given the opportunity to submit their observations on the request for amendment submitted by Intra-Pressé under Article 8(3) of Regulation (EC) No 216/96, which had the effect of seizing the Board of Appeal with a request for annulment of the second decision of the Opposition Division”. By annulling the second decision of the Opposition Division to the extent requested by Intra-Pressé, the Board of Appeal, therefore, relied on elements on which the applicant was unable to submit their observations and thus infringed Article 75 of Regulation (EC) No 207/2009.

In paragraph 67 of the case, it was noted that the applicant had contested the annulment by the Board of Appeal of the second decision of the Opposition Division, in accordance with the request for amendment submitted by Intra-Pressé under Article 8(3) of Regulation

(EC) No 216/96, both procedurally and substantively. Therefore, in the same paragraph, the court held that, “contrary to what EUIPO and Les Éditions P. Amaury claimed, any observations by the applicant on the said application for amendment, if admissible, could have led the Board of Appeal to a conclusion different from that which [had been] given in the contested decision”. Consequently, the General Court decided to annul the contested decision in so far as it had upheld the request for amendment under Article 8(3) Regulation No 216/96 presented by Intra-Pressé (paragraph 68 of the case).

Regarding the fourth plea, in paragraph 82, “the applicant claimed the infringement of Article 8(5) of Regulation (EC) No 40/94 and considered that the Board of Appeal [had been] wrong to find that the use of the mark applied for would risk taking unfair advantage of the reputation of the earlier mark regarding all the goods and services at issue”. Since the conditions existent in Article 8(5) are cumulative, the absence of one of them is sufficient to render the said provision inapplicable, and while “the court considered that the strong reputation of the prior mark could counterbalance the weak similarity of the signs in relation to the goods and services linked to the domain of sports” (Villanova & Kull, 2018), the court decided to reject the request.

Thus, as mentioned by Villanova and Kull (2018), “the General Court allowed the applicant’s action with regard to the goods and services in classes 9, 28 and 41 for which no link had been proven in relation to the domain of activity where a reputation existed (sports contests)”.

The General Court, through the given judgment, decided to annul the decision of the First Board of Appeal of EUIPO (Case R 1962/2015-1) in so far as it upheld the opposition regarding the goods and services in classes 9, 28 and 41 of the Nice Agreement. **Case T-478/21 Les Éditions P. Amaury v EUIPO - Golden Balls (BALLON D’OR)**

Case T-478/21 Les Éditions P. Amaury v EUIPO - Golden Balls (BALLON D’OR) regarding the revocation of the EU word mark

BALLON D'OR on grounds of non-use. Through this decision, the General Court annulled the decision of EUIPO regarding the EU trade mark in respect of entertainment services. However, the court decided to uphold "the revocation of that mark for services consisting in the broadcasting or production of television programmes, the production of shows or films and the publication of books, magazines or newspapers" (CJEU, 2022).

The applicant, Les Éditions P. Amaury, which holds the rights relating to the Ballon d'Or trade mark, requested the annulment of the Decision of the Fourth Board of Appeal of EUIPO of June 2021 (case R 1073/2020-4).

In 2004, the applicant registered an EU trade mark of the word sign BALLON D'OR. The registration concerned "printed matter, books and magazines, as well as services consisting in the organisation of sports competitions and awarding of trophies, entertainment, the broadcasting or production of television programmes, the production of shows or films and the publication of books, magazines or newspapers" (Asia News Monitor, 2022). As mentioned in paragraph 3 of the judgment, "the goods and services in respect of which registration was sought are in, inter alia, classes 14, 16, 38 and 41 of the Nice Agreement, as revised and amended".

In 2017, Golden Balls Ltd filed an application with EUIPO for revocation of the word mark BALLON D'OR on the basis of non-use based on Article 58(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trademark. Article 58(1)(a) on the grounds for revocation states that: *"the rights of the proprietor of the EU trademark shall be declared to be revoked on application to the Office or on the basis of a counterclaim in infringement proceedings: (a) if, within a continuous period of five years, the trade mark has not been put to genuine use in the Union in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use; however, no person may claim that the proprietor's rights in a EU trade mark should be revoked where, during the interval between*

the expiry of the five-year period and filing of the application or counterclaim, genuine use of the trade mark has been started or resumed [...]".

In 2020, the EUIPO Cancellation Division "revoked the mark for all the goods and services for which it had been registered, except for class 41 - sporting activities, namely the organization of sports competitions and awarding of trophies" (CJUE, 2022). However, Les Éditions P. Amaury filed a notice of appeal with EUIPO against the Cancellation Division's decision.

As mentioned in Article 58 of Regulation (EU) 2017/1001, the General Court recalled that "the rights of the proprietor of an EU trade mark are to be declared to be revoked, on application to EUIPO, if, within a continuous period of five years, the trade mark has not been put to genuine use in the European Union in connection with the goods or services in respect of which it is registered" (Asia News Monitor, 2022).

During the case, the applicant argued that the assessment of the facts by the Board of Appeal, which led to the conclusion that the mark had not been put to genuine use, was wrong.

As mentioned in paragraph 46 of the judgment, regarding the services in class 41, the applicant considered that the Board of Appeal had not correctly assessed "the facts and evidence submitted in order to prove genuine use of the contested mark in connection with the following services in class 41: entertainment, television entertainment, publication of books, magazines and newspapers, production of television programmes, organisation of competitions (entertainment), production of shows and film production".

In that regard, the General Court found that "the diffusion of television programmes forms part of telecommunications services, all of which must allow at least one person to communicate with another by sensory means. Les Éditions P. Amaury did not demonstrate that it had maintained a telecommunications network that could be used by others" (CJEU, 2022).

However, the General Court noted that the applicant was unsuccessful in their claims regarding the following classes of the Nice Agreement: in class 38 - broadcasting of television programmes, television broadcasting, satellite transmission, data transmission and cable television broadcasting, class 41 - the publication of books, magazines and newspapers, production of television programmes, production of shows and film production, while EUIPO and the intervener were unsuccessful in their claims in respect of entertainment, television entertainment and organisation of competitions (entertainment) in class 41 (paragraph 83 of the case).

Thus, the applicant did not demonstrate that it had maintained “a telecommunications network that could be used by others” and the company “did not provide to third parties services consisting in the production of television programmes, the production of shows and films, or the publication of books, magazines and newspapers under the contested mark” (CJEU, 2022).

However, the court decided that the first complaint in the second part of the single plea had to be upheld. So, as mentioned in paragraph 80 of the judgment, the contested decision had to be annulled in so far as it upheld the Cancellation Division’s decision to revoke the contested mark as regards the following services in class 41: entertainment, television entertainment and organisation of competitions (entertainment). The court pointed out that “the organisation, under the contested mark, of the Ballon d’Or award ceremony must be classified as an entertainment service and that, in finding that Les Éditions P. Amaury had not supplied such a service in the context of the use of that mark, EUIPO had erred in law” (CJEU, 2022).

On those grounds, the General Court decided to annul the decision of the Fourth Board of Appeal of EUIPO (Case R 1073/2020-4) since it upheld “the decision of the Cancellation Division to revoke the mark in respect of the following services in class 41 of the Nice Agreement, as revised and amended: entertainment, television entertainment and organisation of competitions (entertainment)”.

Conclusions

Following the analysis, it can be seen that the *EU trade mark* system is in continuous development based on economic, cultural and even linguistic integration. European multilingualism can sometimes generate confusion when it comes to registered EU word marks, even in the sports domain. Thus, as in the *Ballon d’Or/Golden Balls case*, situations can arise in which “two orthographically different marks from different languages may be considered to be confusingly similar if they convey the same meaning to any significant population of consumers capable of understanding the terms in both languages” (Beebe & Fromer, 2022, p. 923).

Regarding the *linguistically diversified markets*, Wei (2015) noted that “it will be common to see conflicts between two marks that are in two different languages but have the same or similar meaning”. So, the judgment of the Court of Justice European Union in C-581/13 & C-582/13, as regards the existence of *conceptual similarity* between the two signs at issue - Ballon d’Or/Golden Balls - through the perception of *the average consumer* (English and French speakers), has set a useful precedent for the future.

The decision of the EU Court “demonstrates the extent to which the European institutions, led by the EUIPO, are becoming increasingly demanding in terms of the analysis of *proof of use* and, above all, the definition of the various goods and services covered” (Villanova, 2022). It also concerns the idea of trade marks used in a specific period of time since proprietors should be more cautious regarding the management of the trade marks and the collection of evidence of use in case of legal proceedings.

In conclusion, according to Durant and Davis (2018), “the approach of the EU courts in the Golden Balls case emphasises once again that, despite the frequently high financial stakes which result from corporate investment in branding, there is an eminently practical reason for adopting a notion such as the average consumer and limiting the kind and scale of evidence submitted” in court.

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