

The limits of colour combination trademarks: insights from the blue-and-white colour combination case

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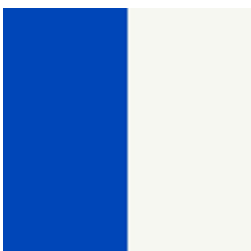
Legal updates: case law analysis and intelligence

- The case involved a well-known clothing retail company's blue-and-white colour combination mark, which was opposed by a cosmetics company
- The courts found that the colour combination lacked distinctiveness for the relevant goods and services
- The case highlights the PTO's role in examining colour combinations based on absolute grounds during *ex officio* proceedings

Under trademark law, distinctiveness is essential for a mark to function as a source identifier, especially when it comes to colour combination trademarks. A recent case involving the blue-and-white colour combination mark of a Turkish clothing retail company has highlighted the complexities surrounding the registration of such marks. The Turkish Patent and Trademark Office (PTO) and the courts played crucial roles in evaluating the distinctiveness and descriptiveness of this colour combination.

Background

A famous Turkish clothing retail company applied for a blue-and-white colour combination trademark for various goods and services in Classes 3, 18, 24, 25 and 35. The mark consisted of a square that was 50% blue (Pantone 2728 C) and 50% white (Pantone P 1-1 C):



The PTO conducted an *ex officio* examination based on absolute grounds and decided to publish the application for all goods and services.

However, a renowned cosmetics company filed a partial opposition against the application, claiming that the colour combination was non-distinctive, particularly for goods in Class 3 and retail services for those goods in Class 35, among other arguments. The opponent argued that blue and white are commonly used by other companies in the cosmetics industry and that the application could also be perceived as a single-colour mark consisting of the colour blue, as the colour white is neutral, so that the examination should be strict.

The PTO found the opponent's argument partially valid, concluding that the colour combination was non-distinctive and descriptive for cleaning and teeth-care products, as well as the associated retail services. The PTO also considered the colour combination's descriptiveness *ex officio*, assessing whether it was perceived as merely descriptive of the relevant goods.

IP Court decision

The opponent appealed the PTO's decision, asserting that a colour combination trademark should be registered only for goods or services for which it has acquired distinctiveness through use (ie, a limited category of goods/services). The opponent argued that granting such a broad protection for this colour combination would harm the public interest by preventing other businesses from using these colours. The opponent provided evidence showing use of the blue-and-white colour combination by itself and other companies in the cosmetics and perfumes industry, suggesting that the colours evoked notions of 'freshness' and 'comfort'.

The IP Court ruled in favour of the opponent, stating that colour trademarks must be sufficiently distinctive to identify the holder's goods or services. The court emphasised that the trademark holder had not proven that the blue-and-white colour combination had acquired distinctiveness through use. The court also found that the colour combination would not identify the defendant's goods and services, thus accepting the appeal for the remaining goods in Class 3 and retail services in Class 35.

Appeal decisions

The trademark holder appealed to the Regional Court of Appeal, which upheld the IP Court's decision, confirming that the colour combination lacked distinctiveness for the relevant goods and services. It reiterated that there was insufficient evidence to support the claim of acquired distinctiveness.

The case was then taken to the Court of Cassation, which confirmed the earlier rulings, further reinforcing the conclusion that the blue-and-white colour combination was not distinctive for the disputed goods and services (Decision No 2023/6876 E, 2024/7988 K, 18 November 2024).

Comment

This case demonstrates the challenges of registering colour combination trademarks, emphasising that, even if a colour combination is used by a company, the latter must demonstrate acquired distinctiveness through extensive use in commerce for the relevant goods/services. The case also highlights the PTO's role in examining colour combinations for descriptiveness and non-distinctiveness during *ex officio* proceedings.

Moreover, the decision illustrates the importance of balancing trademark protection with public interest. Granting broad protection to a colour combination could harm competition by preventing other businesses from using those colours. Thus, the courts and the PTO must carefully evaluate whether a colour combination can be perceived as inherently distinctive or if evidence of acquired distinctiveness through use is required. Ultimately, the ruling reinforces the delicate balance between protecting trademarks and maintaining fair competition in the marketplace.

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