

What Goods are "Related" to Wine : A Short Reply from a European Perspective

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Overview

- I. Basics: The Principle of Likelihood of Confusion
- II. Relevant Criteria for Determining Similarity of Goods/Services
- III. EUIPO Case Law: Goods/Services Related to Wine

I. Basics: The Principle of Likelihood of Confusion (1/2)

- 3 tests relevant for the assessment of likelihood of confusion:
 - Signs/Marks
 - Identical or similar?
 - Goods and services
 - Identical or similar?
 - Overall impression

I. Basics: The Principle of Likelihood of Confusion (2/2)

- Interplay of goods/services and signs:
 - The more similar the signs are, the more different the goods/services must be
 - The less similar the signs are, the more similar the goods/services can be

II. Relevant Criteria for Determining Similarity of Goods/Services (1/4)

- Holistic approach:
 - All circumstances and factors characterizing the relationship of the goods/services with each other must be taken into account
 - No clear priorities among relevant factors
- Consideration of the individual case

II. Relevant Criteria for Determining Similarity of Goods/Services (2/4)

- Relevant factors/circumstances include
 - Nature: Do the products have the same characteristics, e.g. the same material composition?
 - Production process: Are the products subject to the same production process? Is it conceivable that the goods are manufactured under the same operational control?
 - Intended purpose: What purpose do the products serve?
 - Targets: Who will purchase the products? Same customers?
 - Method of use/consumption: Are the products used/consumed similarly?

II. Relevant Criteria for Determining Similarity of Goods/Services (3/4)

- Relevant factors/circumstances include
 - Competition: Are the products in competition with each other?
 - Substitutability: Are the products substitutable and exchangeable?
 - Complementarity: Are the products complementary to each other (e.g. main product and accessories)?
 - Distribution channels: Are the products in the same specialty stores or in the same departments of department stores?

II. Relevant Criteria for Determining Similarity of Goods/Services (4/4)

- Not/hardly relevant factors/circumstances are
 - Nice classes the goods/services belong to (?)
 - Prior registrations of other brand owners (cf. Mucky Duck rule) (?)
- Likelihood of confusion is a matter of law

III. EUIPO Case Law: Goods/Services Related to Wine (1/6)

- **Latest Case Law of EUIPO**

- EUIPO Opposition Nr. B 3 050 326 (22/5/2019)
- EUIPO Opposition Nr. B 3 054 547 (22/5/2019)
- EUIPO Opposition Nr. B 3 022 103 (15/5/2019)
- EUIPO Opposition Nr. B 3 049 064 (25/4/2019)
- EUIPO Opposition Nr. B 3 022 442 (14/2/2019)
- EUIPO Opposition Nr. B 3 023 929 (23/1/2019)

III. EUIPO Case Law: Goods/Services Related to Wine (2/6)

- **Sparkling wines** are identical with wine
- **Distilled beverages such as grappa** is similar with wine as
 - they have the same nature
 - they usually coincide in relevant public, distribution channels and method of use
 - they are in competition

III. EUIPO Case Law: Goods/Services Related to Wine (3/6)

- **Beer and brewery products** are similar to alcoholic beverages, including wine
 - they belong to the same category of alcoholic drinks intended for the general public, although their production processes are different
 - they have the same distribution channels, i.e. are served in restaurants and in bars and are on sale in supermarkets and grocery stores
 - they can be found in the same section of supermarkets, although they can also be distinguished to some extent by sub-categories
 - they can originate from the same undertakings

III. EUIPO Case Law: Goods/Services Related to Wine (4/6)

- **Services for providing food and drink** are similar, *though to a low degree*, to alcoholic beverages, incl. wine as
 - they can overlap in the producers (e.g. own wine bottling)
 - they can overlap in distribution channels
 - they are complementary to each other

III. EUIPO Case Law: Goods/Services Related to Wine (5/6)

- **Non-alcoholic beverages, including soft drinks, water, juices, syrups** are not similar to wine as
 - they are different in nature and purpose
 - they have different production processes
 - they have different method of use/consumption
 - the sectors of alcoholic and non-alcoholic beverages are different (different industries with different legal rules)
 - it is unlikely that producers of alcoholic beverages would also be engaged in the production of non-alcoholic drinks
 - the products are sold in different sections of supermarkets and they target different consumers
 - the mere fact that some non-alcoholic drinks can be marketed and consumed with alcoholic drinks is not sufficient to challenge these findings

III. EUIPO Case Law: Goods/Services Related to Wine (6/6)

- **Fruit and vegetables** are not similar with wine as
 - they have different natures, purposes and methods of use
 - they are neither complementary nor in competition
 - they are not produced by the same undertakings
 - they do not target the same public

THANK YOU!

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