CJEU: EUIPO must issue new ‘Fack Ju Göthe’ decision

IRIS 2020-4:1/2

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In a judgment of 27 February 2020 (Case C-240/18), the Court of Justice of the European Union (CJEU) decided that the European Union Intellectual Property Office (EUIPO) should issue a new decision on the application for registration of the word sign ‘Fack Ju Göthe’ as an EU trademark, which it had originally rejected. The Court ruled that the classification of the word sign as contrary to accepted principles of morality and therefore unsuitable for registration had been erroneous because insufficient account had been taken of the fact that this comedy film title would not be perceived as morally unacceptable by the German-speaking public at large. The case concerned a legal dispute dating back to 2015, when Constantin Film Produktion GmbH, as the owner of the licensing rights to the eponymous comedy film, which had been very successful in German-speaking countries, filed an application with the EUIPO for registration of the word sign ‘Fack Ju Göthe’ as an EU trademark for various goods and services. The EUIPO refused the application partly on the basis of Article 7(1)(f) of Regulation No. 207/2009, which states that trademarks contrary to public policy or to accepted principles of morality must not be registered. The German-speaking public would recognise in the words ‘Fack Ju’ the vulgar and offensive English phrase ‘Fuck you’, of which it was a phonetic transcription in German. The addition of the word ‘Göthe’ in reference to the famous German author Johann Wolfgang von Goethe did not alter this perception. After Constantin Film’s appeal against this decision was dismissed by the General Court of the European Union, the film production company took the case to the CJEU. The CJEU annulled the decisions of the EUIPO and the General Court because they had not taken sufficient account of the fact that, notwithstanding the assimilation of ‘Fack Ju’ to ‘Fuck you’, the title of the comedy film concerned was not perceived by the German-speaking public as morally unacceptable. Although a film’s success did not automatically prove that its title and a word sign of the same name were socially acceptable, it was at least an indication of such acceptance which must be assessed in the light of all the relevant factors in the case in order to establish, in concrete terms, how the sign would be perceived if it were used as a trademark. However, in the CJEU’s opinion, this assessment had not been adequately carried out. In particular, for example, insufficient account had been taken of the fact that the title had not stirred up public controversy despite its high visibility, and that the film had even been authorised for young audiences. The EUIPO had also ignored the fact that the films had received funding from various organisations and had been used by the Goethe Institute for educational purposes. Finally, the term ‘Fuck you’,

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especially its phonetic transcription in German accompanied by an extra word, did not necessarily carry the same meaning for the German-speaking public as for an English-speaking audience. Furthermore, no concrete evidence had been put forward to plausibly explain why the German-speaking public at large would perceive the word sign 'Fack Ju Göhte' as going against the fundamental moral values and standards of society when it was used as a trademark, even though that same public did not appear to have considered the title of the eponymous comedies to be contrary to accepted principles of morality. The EUIPO must therefore issue a new decision on the registration application.

EuGH, Urteil vom 27.02.2020, C-240/18 P

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CJEU, judgment of 27.02.2020, C-240/18 P

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