

General Court confirms partial revocation for non-use of K-Way's five-stripe mark

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- Proof of genuine use of a trademark must rely on concrete and objective evidence
- Evidence based on probabilities or presumptions is not admissible
- It is sufficient to demonstrate an unequivocal link between the products listed on the invoices and those actually bearing the trademark

On 25 June 2025 the Sixth Chamber of the General Court issued its judgment in [K-Way SpA v EUIPO](#) (Case T-372/24).

Background

The case concerned the EU figurative trademark No 3971561, registered by K-Way SpA on 30 June 2006:



The trademark was described as follows:

“ Rectangular stripe consisting of vertical parallel bands of different sizes, in the colours navy blue, orange, yellow, orange and navy blue, in this sequence. This stripe is applied to products, generally near seams, zippers, shoulders, cuffs, joints, finishes or edges. ”

The trademark claimed the following goods:

- Class 18: “Suitcases, briefcases, pouches, handbags, wallets, purses, backpacks, school bags, shopping bags, vanity cases intended to contain toiletry items.”
- Class 25: “Clothing, footwear, headgear.”

On 15 October 2019 Adorno Gubbini filed a request with the EUIPO for revocation of the trademark for non-use pursuant to Article 58(1)(a) of Regulation 2017/1001. On 11 July 2023 the EUIPO’s Cancellation Division partially upheld the revocation request with respect to the claimed products, except for outerwear and footwear.

Following an appeal by K-Way, the EUIPO Board of Appeal:

- considered that the various forms of use of the trademark, such as the repetition of the colour sequence, did not alter its distinctive character; and
- recognised that genuine use of the contested trademark was proven for suitcases, wallets, backpacks, headgear and clothing in general.

K-Way filed a further appeal with the General Court, seeking recognition of genuine use - and thus validity - of the contested trademark also for “pouches; briefcases; handbags; purses; shopping bags; and vanity cases”. It requested the annulment of the challenged decision and remittal to the Board of Appeal.

General Court decision

The court first rejected the request to remit the case to the Board of Appeal, declaring - based on settled case law - that it lacked the competence to issue orders to EU

institutions, such as the EUIPO.

Regarding non-use, the court clarified that the contested trademark must be used publicly and externally, not merely symbolically. To verify genuine use, it is necessary to rely on concrete and objective elements that prove actual use of the trademark in the relevant market. Evidence based on probability or presumptions is excluded. Proof of use must concern the place, time, extent and nature of the use, and generally consists of documents and other supporting materials such as packaging, labels, price lists, catalogues, invoices, photographs and press advertising.

The court determined that, in this case, photographs of K-Way's shopfronts were not sufficient to demonstrate genuine use, because such images could serve only as indicative evidence. Moreover, K-Way uses multiple trademarks, which prevents consumers from establishing an unequivocal link between the shopfront, the products and the contested trademark. Images of labels were also deemed insufficient, as K-Way had failed to prove that the tags shown were actually affixed to the relevant products.

Finally, even the submission of invoices did not demonstrate genuine use of the contested trademark: although the court did not require that the trademark appear on the invoices, K-Way failed to provide sufficient proof of an unequivocal link between the products listed on the invoices (particularly pouches, briefcases, handbags, wallets, purses, backpacks, school bags, and vanity cases) and those actually bearing the contested trademark.

However, K-Way did prove the required link between invoices and the trademark in relation to shopping bags. Therefore, the court annulled the Board of Appeal's decision in this respect and held that the contested trademark had not lapsed for non-use with regard to this product category.

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