

Erotic products, happy life ends here [T?457/17 HAPPY LIFE, Medisana AG / EUIPO, 25 september 2018]

Categories : [Trademark](#)

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Using a slogan as a trademark could be an original way to distinguish your products or services provided the slogan is finely formulated. Slogans such as « **Just do it** » (Nike) or "**Because you're worth it**" (L'Oréal) obviously attract the consumers' attention towards the goods or services concerned considering they make it easy to remember.

The General Court of Justice has once again affirmed the limit of protecting slogan through trademark registration and confirmed that "**HAPPY LIFE**" would be seen as a simple advertisement for erotic products and not as a trademark.

Case background

On 29 February 2016, the company Medisana AG filed the trademark "**HAPPY LIFE**" in classes 8, 10 and 11 before the EUIPO. The EUIPO, followed by the 4th Chamber Board of Appeal, both rejected to register the trademark in respect of all erotic goods targeted in class 10, i.e. "*Erotic articles to be applied directly to the body, not included in other classes; massage apparatus, vibrators; devices promoting erection and orgasm; massage apparatus; manual massage apparatus for the skin or different parts of the body; devices promoting erection and orgasm controlled by Bluetooth; toys, including accessories for erotic games with partner*", and based the refusal on lack of distinctiveness according to the article 7 §1 b) of EC regulation No 207/2009. They considered that "**HAPPY LIFE**" would be easily perceived as a general promise of customer satisfaction. Meaning that upon using these erotic products, they will feel so good that they will reach happiness therein.

The General Court of Justice rejected the appeal and confirmed this decision on 25 september 2018: "**HAPPY LIFE**" could not be registered as a trademark for those goods.

Brief analysis

In contrary of more flexible approach of the French Trademark Office, the EUIPO and EU judges continue to strictly assess the distinctive character needed for a slogan to be trademarked.

First, the EUIPO reminds that it is possible to trademark a slogan if "**beyond its promotional function, the slogan has to be directly perceptible to consumers as an indication of the commercial origin of the targeted goods or services**" (according to point 22 of the EUIPO's



submissions).

According to the EUIPO and judges, the slogan “**HAPPY LIFE**” would only be perceived as a way to advertise the goods and thus won’t be able to distinguish the origin of the goods among others.

No matter that the wordings “**HAPPY LIFE**” would not directly describe the quality of the goods (great/relaxing massage) nor their function/purpose (to obtain a massage), neither that this expression could be subject to various interpretations, this slogan provides a clear advertisement message.

Conclusion

This decision points out the limit of trademark protection for slogans and reminds us to further remain vigilant when looking for protect catchy and valuable slogan.

The simplest slogan attracts the most. Our first advice would however be to avoid using too general promotional formula as a slogan and find a balance between public attraction and trademark distinctiveness.

Balance is difficult to reach according to the EUIPO’s strict assessment of distinctiveness. Our main recommendation would be to stay cautious and await for your slogan’s distinctiveness acquired through use before filing it in order to avoid Office’s refusal.

Stay cautious, harsh refusal ends here.

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