



Soviet icon unacceptable to the OHIM

By Robert Hawley

The General Court of the European Union recently confirmed (in Case T-232/10) the decision of the European Community Trade Mark Office (“OHIM”) Board of Appeal that an application comprising the coat of arms of the former USSR should be refused registration as a Community trade mark on the grounds that it is inherently unacceptable.

In reaching its decision, the Board of Appeal took account of administrative practice and legislation in the Czech Republic, Hungary and Latvia, when holding that signs connected with the former USSR should be rejected on the grounds that they will be regarded as contrary to public policy and accepted principles of morality by a substantial sector of the relevant purchasing public (that is, those consumers living in areas of the EU which were once under the control of the former Soviet regime). The application was thus found to contravene the provisions of Article 7(1)(f) of the Community Trade Marks Regulation.



In its pleadings before the General Court, the applicant argued that the Soviet coat of arms has lost its connotation of subjugation and is instead now viewed as radical and even contemporary, to the point that it has acquired a new distinctive character. The applicant also referred to the fact that the mark in question has not been banned in any country of the European Union and also that the European Commission rejected a call for a general ban upon Communist imagery (in 2005).

The General Court did not accept these arguments, in particular placing reliance on the fact that Article 269/B of the Hungarian Criminal Code prohibits the use in public of “totalitarian symbols”, including ‘the hammer and sickle’ and ‘the five-point red star’. Interestingly, the applicant also claimed that the above-mentioned legislation in Hungary and Latvia was contrary to the European Convention on Human Rights. However, in rejecting the claim (and even the notion that it had authority to pronounce upon such an issue) the General Court held that the laws in question served as evidence of fact which could legitimately be used to assess the likely impact of the applicant’s mark upon a substantial section of the relevant purchasing public within the EU.

This case is noteworthy not just for its obvious politico-historical significance but also because it palpably demonstrates that, when adopting/applying to register a trade mark within the European Union, brand owners (and their advisers) need to be mindful of not only the Community trade mark Regulations and Rules but also the fact that the provisions of non-overtly intellectual property laws and practices in the various EU Member States can, and will, be considered by the OHIM when assessing whether a trade mark should be accepted for registration.