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FRIDA KAHLO v. FRIDA – When Similar Names Do Not Confuse

In its recent decision (B-3401/2024), the Swiss Federal Administrative Court dismissed an appeal by Frida Kahlo Corporation, which had opposed the registration of the trademark FRIDA by Fridababy, LLC, relying on its own earlier FRIDA KAHLO mark, which was registered for similar and identical goods. The Court found no likelihood of confusion, holding that KAHLO is the distinctive element of the combined mark, whereas FRIDA is a fairly common first name that does not in itself evoke the artist.

Sylvia Anthamatten
MLaw, LL.M., Attorney at Law
Counsel
Phone +41 58 658 55 90
sylvia.anthmatten@walderyss.com

Claire Dentand
BLaw
Trainee Lawyer
Phone +41 58 658 59 84
claire.dentand@walderyss.com

Background

In June 2023, Fridababy, LLC applied to register the trademark FRIDA for toothbrushes, hair brushes and exfoliant brushes in class 21. Frida Kahlo Corporation, which owns the earlier trademark FRIDA KAHLO registered inter alia for brushes in class 21, filed an opposition with the Swiss Federal Institute of Intellectual Property (IPI). The IPI dismissed the opposition, holding that there was no likelihood of confusion between the two marks. Frida Kahlo Corporation appealed against this decision to the Swiss Federal Administrative Court (the Court).

Decision

The Court had to determine whether the signs FRIDA KAHLO and FRIDA were likely to be confused. While the Court acknowledged that the marks covered similar and identical goods, it acknowledged that the signs themselves were dissimilar in their overall impression. It considered KAHLO to be the dominant and distinctive element of the earlier mark. Although the first element of a word mark is usually given more weight, the Court emphasised that FRIDA KAHLO is perceived as a whole and is conceptually associated with the artist, whereas FRIDA alone would not trigger such association.

Conceptually, the average Swiss customer would not link the first name FRIDA with the artist Frida Kahlo. In addition, the presence of KAHLO in the sign FRIDA KAHLO created clear aural and visual differences between the two marks. On this basis, the Court concluded that there was no likelihood of confusion. The key factor was that KAHLO is not only the (more dominant) surname but also an uncommon element for Swiss customers, and thus the main characteristic of the earlier mark. Furthermore, the first name FRIDA was only perceived as referring to the artist when combined with KAHLO; therefore, FRIDA alone would not be confused with the appellant's mark FRIDA KAHLO.

Accordingly, the Court dismissed the appeal and confirmed that the coexistence of the two marks did not give rise to confusion.

Comments

Swiss case law on personal names is based on the principle that name marks are subject to the same rules as other trademarks. Yet, their assessment in practice is strongly influenced by how the average public perceives first names and surnames. This emerges clearly in the case of FRIDA KAHLO v. FRIDA. Earlier name mark disputes typically involved a first name invoked against a composite name, i.e. Adi v. Adi Dassler, Hugo v. Hugo Starck, Michel v. Michel Compte Waters or Graham v. Graham Hill, where likelihood of confusion was found, in part

because the earlier sign appeared in its entirety within the later mark.

Central to the present inquiry was the frequency of a name. While average customers will likely recognise common names as personal names, uncommon names may be perceived as arbitrary words, resulting in the uncommon name being perceived as the dominant element of the sign – as was the case here with the KAHLO surname. The Court classified FRIDA as an occasionally used name, meaning that customers would perceive FRIDA primarily as a given name rather than as referring to the artist. Accordingly, the Court ruled out a likelihood of confusion where only the common first name FRIDA was adopted by the later mark – even in relation to identical goods and even where no additional distinguishing element was added.

Another aspect highlighted in this decision is that, with regard to famous individuals, the renown of a person, be it Frida Kahlo or Salvador Dalí, does not in itself enlarge the legal scope of protection of the respective name marks, as fame as an artist must not be confused with trademark distinctiveness. What matters is whether, in relation to the goods and services in question, the public perceives the sign as referring to that individual. If the goods are connected to the artist's creative work, the link may be made; however, if the connection is far removed, as with brushes in relation to Frida Kahlo, it will not.

Against this background, disputes involving personal name marks require a particularly context-sensitive analysis. While Swiss case law and legal scholars state that name marks are assessed under the same principles as other trademarks, the reasoning in the present judgement illustrates that the perception of names – especially the distinction between common first names and distinctive surnames – can materially influence the scope of protection.