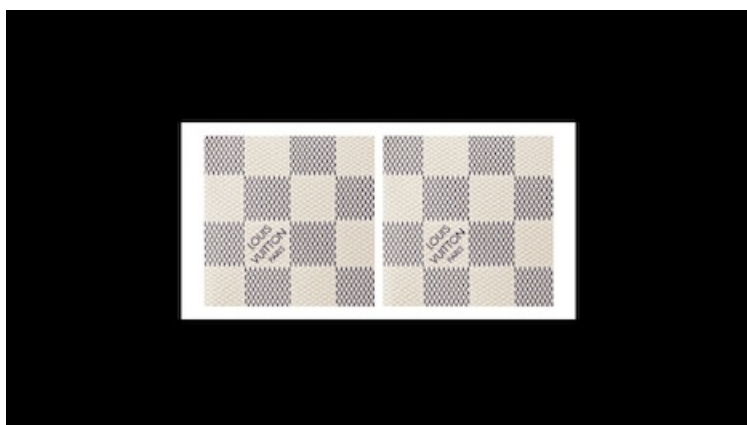


LEGAL

Louis Vuitton fails to prove acquired distinctiveness of white-and-blue Damier Azur pattern in EU

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Louis Vuitton's white-and-blue Damier Azur pattern. Image credit: Louis Vuitton

By LUXURY DAILY NEWS SERVICE

French fashion label Louis Vuitton has lost a long-running dispute with the European Union over its white-and-blue Damier Azur pattern, failing to convince a top court that its checkered mark was distinctive in 27 countries across the E.U.

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The E.U.'s General Court found that the Board of Appeal of the European Union Intellectual Property Office was correct that Louis Vuitton had not demonstrated that the white-and-blue Damier Azur pattern had acquired distinctiveness for use on leather goods under class 18 of E.U. trademark registration. The court upheld the Board of Appeal's June 2020 decision.

"This action relates solely to whether the contested Louis Vuitton trademark has acquired a distinctive character [in its use by Louis Vuitton]," the General Court said in its decision.

The decision was handed in the case, *Louis Vuitton Malletier v. European Union Intellectual Property Office (EUIPO)*, T275/21.

Black and white

Ending a legal battle that began in 2015, the judgment means that **Louis Vuitton** is not entitled to trademark registration for the white-and-blue Damier Azur pattern for use on handbags, backpacks, change purses and luggage.

The implication of this E.U. decision is key for other luxury brands to understand.

Indeed, the General Court set a high standard for acquired distinctiveness, which requires proving that consumers directly associate a mark with a single good or service due to the holder's wide use and promotion of the mark.

"[It] requires that at least a significant proportion of the relevant public identifies the goods or services concerned as originating from a particular undertaking, because of that mark," the court said in its judgment.

"Either that [mark] had acquired distinctive character through use prior to the date on which the application for registration was filed, or that the mark had acquired such character through use that had been made between the date of its registration and the date of application for a declaration of invalidity," the court said.

Louis Vuitton produced invoices for sale of goods under class 18 to consumers in E.U. countries such as Latvia, Lithuania, Estonia, Bulgaria, Malta, Slovakia and Slovenia. The goal was to show that the relevant public was exposed to the white-and-blue Damier Azur pattern.

But the General Court did not buy that, saying the Board of Appeal was correct when it set out to "examine first whether the contested mark had acquired distinctive character through the use that had been made of it in Bulgaria, Estonia, Latvia, Lithuania, Slovakia and Slovenia [and] proceed to such an examination in respect of the other E.U. member states only if distinctive character acquired through use had been demonstrated for the member states concerned."

Luxury Daily will soon have more detailed coverage of this decision

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