

CASE COMMENT

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THE TRADEMARK PABLO ESCOBAR IS CONTRARY TO THE PUBLIC POLICY AND THE PRINCIPLES OF MORALITY

In Judgment of 17 April 2024 (Case [T-255/23](#), Pablo Escobar), the General Court of the European Union (GC) has confirmed the rejection of a EUTM application for “PABLO ESCOBAR”, on the ground that the mark is contrary to public policy and to accepted principles of morality.

Pablo Escobar, who was born on 1 December 1949 and died on 2 December 1993, was a Colombian national, presumed to be a drug lord, narco-terrorist, and politician, who was the founder and leader of the Medellín Cartel.

On 30 September 2021, The US company Escobar Inc., filed an EUTM application for the word sign Pablo Escobar, for a wide range of goods and services in classes 3, 5, 9, 10, 12, 13, 14, 15, 16, 18, 20, 21, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45, which was rejected by the EUIPO on the basis of article 7(1)(e) EUTMR, in accordance with which “trade marks which are contrary to public policy or to accepted principles of morality” shall not be registered.

Escobar Inc. appealed this decision before the GC, which has been dismissed.

The appellant argued that in the past, the names of alleged criminals as ‘Robin Hood’, ‘Bonnie and Clyde’, ‘Al Capone’ or ‘Che Guevara’, which have become iconic, had already been registered as EUTMs, and that Pablo Escobar, because of his many good deeds for the poor in Colombia, has likewise become a mythical figure in mainstream popular culture, as evidenced by the entry about him in the online encyclopaedia Wikipedia, the successful series ‘Narcos’, and the fact that during his lifetime he was nicknamed the ‘Robin Hood of Colombia’.

The GC firstly reminds that the relevant public cannot be limited, for the purposes of the examination of the ground for refusal provided for in Article 7(1)(f) EUTMR, solely to the public to which the goods and services in respect of which registration is sought are directly addressed, but also in respect of other persons who may encounter that sign incidentally in their day-to-day lives. It finds also necessary to focus on the relevant Spanish public, who is the most familiar with the Colombian national called Pablo Escobar, on account of the privileged links, in particular historical links, between Spain and Colombia.



In this regard, according to the GC a non-negligible part of the relevant Spanish public will associate the sign 'Pablo Escobar' with the crimes committed by the Medellín cartel or by Pablo Escobar, which are unacceptable in modern democratic societies, as they are absolutely contrary to the recognised ethical and moral principles, contradicting, the indivisible and universal values on which the EU is founded, namely human dignity, freedom, equality and solidarity, the principles of democracy and the rule of law, and the right to life and physical integrity.

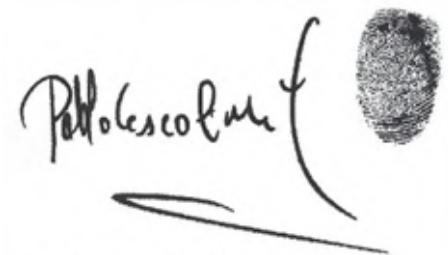
Furthermore, the mark applied for can also be perceived as being highly offensive or shocking, as an apology of crime and a trivialisation of the suffering caused to thousands of people killed or injured by the Medellín cartel, irrespective of whether Mr. Escobar acted in favour of the poor during his lifetime, or whether he has become an icon of popular culture in Spain.

The GC adds that Pablo Escobar's fundamental right to the presumption of innocence has not been infringed because, even though he was never criminally convicted, he is publicly perceived in Spain as a symbol of organised crime responsible for numerous crimes.

Concerning the existence of previous registrations for names related to crime, the GC states that the legality of the decisions of the Boards of Appeal must be assessed solely on the basis of the EUTMR, as interpreted by the Courts of the European Union, and not on the basis of a previous decision-making practice, and that in any case those previous names "had more to do with history than current events" and their "offensive character may have diminished over time".

Therefore, the GC dismisses Escobar's appeal in its entirety. The judgment can still be appealed before the Court of Justice of the European Union.

It is interesting to note that the trademark PABLO ESCOBAR is registered in several countries, such as the United States, Austria, Brazil, China or the United Kingdom. The EUIPO likewise granted registration of EUTM No. 10332567 in classes 14,18 and 25 in the past.



Pablo Emilio Escobar Gaviria

