

## EUIPO: pattern mark would free-ride on coat-tails of Louis Vuitton's reputed 'Toile Monogram' mark

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### EUROPEAN UNION

Legal updates: case law analysis and intelligence

- Louis Vuitton opposed a pattern mark in Classes 18 and 25 based on the earlier 'Toile Monogram' mark, invoking Article 8(5)
- The Opposition Division found that consumers in Italy and France were likely to form a mental association – or "link" – between the marks
- It was highly probable that use of the contested mark would free-ride on the coat-tails of the 'Toile Monogram' mark

In opposition proceeding between Louis Vuitton Malletier SAS and Qingjian Fu, the EUIPO's Opposition Division has ruled in favour of the reputed French luxury fashion house ([Opposition B 3 198 676](#)).

### Background

In June 2023 Louis Vuitton filed an opposition against all the goods covered by EU trademark application No 18 832 921 in Classes 18 and 25. The application consisted of a repeating pattern of decorative elements, featuring flower-like designs containing the letter 'B' and star-shaped motifs containing the letter 'R':



Louis Vuitton based its opposition on, among others, the earlier EUTM for the 'Toile Monogram' (No 15602, depicted below), for which it claimed reputation within the European Union dating back to 1896, on the basis of Article 8(5) of [Regulation 2017/1001](#):



Louis Vuitton argued that its 'Toile Monogram' has evolved into a symbol that conveys luxury, exclusivity and elegance to the public. As a result, by adopting a very similar pattern for its products, the applicant would instantly enhance the value of its business and significantly reduce marketing and advertising costs, benefiting from the transfer of this positive association to its own products.

In support of its reputation argument, Louis Vuitton submitted voluminous evidentiary material showing the use of the 'Toile Monogram' trademark for a substantial period of time. The submitted evidence consisted of advertising material including the company's participation and sponsorship in international and reputed sports competitions followed by millions of people, press articles characterising the mark as a "universal icon" and as "iconic", catalogues, mentions in magazines and Instagram pictures, showing the widespread use of the pattern across various product lines, including handbags, luggage, and apparel for over 15 years, as well as relevant favourable case law.

## Decision

Taking the above into consideration, the Opposition Division concluded that Louis Vuitton had demonstrated reputation of its earlier mark at least in two major European markets (Italy and France), but also in Spain, Germany, Sweden, the Netherlands and Greece.

After assessing the visual, aural and conceptual similarities between the two marks, the Opposition Division found that, despite the limited resemblance between the marks, as the letters used were different, and the certain reputation of the earlier mark, some structural similarities remained: both signs shared an alternating pattern of flowers, stars and letters, as well as the presence of circles. Additionally, the contested goods and those associated with the earlier mark were identical or similar, or at least fell within the same fashion sector. Based on these considerations, the Opposition Division concluded that consumers in Italy and France were likely to form a mental association, or "link", between the contested mark and the earlier sign – the mental "link" between the signs being essential for evaluating any potential unfair advantage or damage to the distinctiveness or reputation of the earlier mark.

The Opposition Division went on to consider that, given the certain reputation of the 'Toile Monogram' mark and the (limited) similarities between that mark and the mark applied for, in addition to the significant proximity between the conflicting goods from the point of view of the Italian and French consumers, the relevant public would make a connection between the marks, something which was expected to bring a commercial benefit to the applicant. This, according to the Opposition Division, made it highly probable that, if the applicant used the contested mark, it would free-ride on the coat-tails of the 'Toile Monogram' mark – namely, it would take unfair advantage of its reputation, as well as of the considerable investments undertaken by Louis Vuitton to achieve that reputation.

Consequently, the Opposition Division upheld the opposition in its entirety and refused registration of the pattern mark applied for.

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