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## General Court confirms lack of likelihood of confusion between IOS FINANCE and EOS

European Union - [Maiwald Patentanwalts- und Rechtsanwalts-GmbH](#)

- Debt collection company EOS opposed registration of IOS FINANCE in Class 36 based on earlier mark EOS
- EUIPO found that there was no likelihood of confusion and General Court confirmed
- Among other things, court held that, even though there may be oral communication regarding marks in after-sales context, choice of service is generally made visually

Instead of recovering money as it usually does, debt-collection service EOS Deutscher Inkasso-Dienst GmbH ('the applicant') was ordered to pay up by a recent judgment of the General Court. On 12 June 2019 the applicant's third attempt to prevent the registration of the EU trademark IOS FINANCE by IOS Finance EFC SA was rejected by the General Court ([Case T-583/17](#)).

In support of its appeal against the decision of the Second Board of Appeal of the EUIPO, which had held that there was no likelihood of confusion between the figurative mark IOS FINANCE and the earlier figurative mark EOS, the applicant again relied on a single plea in law alleging infringement of Article 8(1)(b) of [Regulation 2017/1001](#).

The General Court held that a likelihood of confusion between IOS FINANCE and the earlier mark EOS presupposed that the signs were identical or similar, and the respective goods or services claimed by both marks were identical or similar.

With regard to the comparison of the services, particularly in Class 36 ("insurance; financial affairs; monetary affairs; real estate affairs"), the court upheld the finding of the Board of Appeal that the services were identical.

Turning to the question of the similarity of signs, however, the court declared that EOS and IOS FINANCE were visually different, but phonetically similar to at least an average degree. The court also found that there was no overlap from a conceptual point of view. As regards the visual similarity, it is interesting to note that, contrary to the applicant's argument that there was at least an average degree of similarity, the court went beyond the board's finding that the signs were similar to a low degree, by denying that the signs were similar altogether.

While the court held that the services were similar and that the signs were similar phonetically, its assessment was not yet complete. Following the principle of interdependence, the court went on to assess the case globally, taking all relevant factors into account, including:

- the weighing of the visual, phonetic and conceptual aspects of the signs;
- the degree of attention of the relevant public; and
- the distinctiveness of the earlier mark.

Relying on this global assessment, the court found that, although there may be oral communication regarding the marks at issue in the after-sales context, the choice of service at issue is generally made visually. Therefore, the visual aspect had to be given more weight. The court concluded that the striking differences in the overall visual impressions created by the respective signs could not be offset by the identity of the services or an at least average degree of phonetic similarity. Accordingly, the General Court concluded that there was no likelihood of confusion.

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