

# European Best Practices in preventing bad faith trademark applications

## 欧洲预防恶意商标申请的最佳实践



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May 2019  
2019年5月

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**GAZZETTE SURVEILLANCE:** Having surveillance in place of the trademark filed/published by EUIPO and by the National IP Offices. Most commonly is done by software (COMPUMARK and Coresearch to name the most popular). Trademark agents also offer the “manual” service of watching and reporting.

**监督商标公告:** 对欧盟知识产权局和国家知识产权局申请/公告的商标进行监督。通常使用软件进行监督（最受欢迎的是COMPUMARK和Coresearch）。商标代理人也可以提供人工监督和报告的服务。



**\_EUIPO OPPOSITION:** If a trademark filed in bad faith is spot on the EUIPO registry, it is possible to file an opposition to the registration with the same EUIPO (deadline 3 months from publication).

A decision is usually issued in around 8 months. Appeal can be filed with EUIPO Boards of Appeal

**欧盟知识产权局的商标异议:** 如果发现有人向欧盟知识产权局的商标注册管理机构恶意提交商标申请的, 则可向欧盟知识产权局提出异议 (自公告之日起3个月内)。决定书一般在8个月内作出。可向欧盟知识产权局上诉委员会提出复审。



**\_NATIONAL OFFICE OPPOSITION:** If a trademark filed in bad faith is spot on a registry a European country, it is “usually” possible to file an opposition to the registration with the local Trademark Office (deadlines change but usually are short from 30dd to 3 months).

**国家知识产权局的商标异议:** 如果发现有人向某一欧洲国家的商标注册管理机构恶意提出商标申请的，通常做法是向当地商标局提出异议。（截止日期会有不同，通常在30天到3个月）。



**\_COOLING-OFF PERIOD.** The first step of procedure is 2 months cooling off during which the parties can reach out for negotiating an agreement - typically a **coexistence agreement**. If the agreement is signed, opposition is usually withdrawn.

Cooling off can be extended for maximum further 22 months. Both parties need to agree on the request of extension. After the initial 2 months, either party may opt put unilaterally.

After the cooling off period expires, the opponent must file evidence in support of the opposition within two months. The applicant will be given a further period of two months to respond.

### **冷却期：**

异议程序的第一步是给予双方当事人两个月的冷却期，以使当事人之间协商达成合意 - 典型的有共存协议。如果协议被签署，异议即可撤销。

冷却期最长可至22个月。经双方当事人同意，可提出延长请求。最先的两个月的冷却期结束后，任何一方都可以单方面选择终止。

当冷却期届满时，异议人必须在两个月内提交支持该异议的证据。商标申请人将得到另外两个月的答辩期。



**\_Coexistence Agreements:** it must comply with Article 53(1) of the EU trade mark Regulation 207/2009 (EUTMR), according to which the holder of earlier rights must expressly consent to the registration of the conflicting sign.

**共存协议:** 依照欧共同体第207/2009号条例第53条第（1）款规定，在先权利人必须明确同意冲突标识的注册。





**\_C&D Letter:** Often a C&D letter is sent to the bad faith applicant to require the withdrawal of the trademark and to remind not to use the trademark.

**律师函:** 经常向恶意商标申请人发送律师函, 要求他们撤回商标申请, 并要求他们不得使用该商标。

## **COSTS AND DAMAGE COMPENSATION.**



The losing party to an opposition proceeding is liable to pay the costs of the successful party, subject to certain ceilings. In most cases the opponent risks having to reimburse 300 euro while the unsuccessful applicant risks being liable to pay 650 euro. The same rules apply on appeal with higher fees.

According to the local legislation of the country where the “infringer” is resident or domiciled, the party that is forced to activate legal procedure (opposition or invalidation) can later on sue the bad faith applicant to the Court and obtain damage compensation. It is usually necessary to send c&d letter before engaging the legal procedure.

### **费用和赔偿损失**

异议程序的败诉方应向胜诉方支付一定的费用，但有上限。大多数案件中，如异议人败诉，存在着支付300欧元赔偿费的风险。当商标申请人败诉，则存在支付650欧元赔偿费的风险。同样的费用规则也适用复审程序中。

根据“侵权人”常住地或居住地所在国家的当地的法律规定，当事人被迫启动法律程序（异议程序或无效程序）后，将恶意商标申请人诉至法院请求赔偿损失。在启动该法律程序前，有必要发送律师函。



**USE OF THE TM - INFRINGEMENT:** If the trademark is also in use (and not only filed for registration) infringement procedures shall be considered.

Infringement procedures shall be formally brought in front of national courts of the Member States. Usually it is possible to apply for urgent measures (seizure and injunction)

Urgent measures: usually judges grant provisional/temporary measures if the following conditions are met:

- “Fumus boni iuris”: likelihood of success on the merit of the case (or prima facie case)
- “Periculum in mora”: danger in delay

**商标的使用 - 侵权:** 如果恶意申请的商标已被使用（不仅限于提交申请注册），即可考虑侵权诉讼。

通常向成员国国内法院提交侵权诉讼。通常也可申请紧急措施（扣押和禁令）。

紧急措施: 通常由法官依据以下情况发布临时或永久措施:

- “Fumus boni iuris”: 请求方凭法律理据胜诉的合理可能性。
- “Periculum in mora”: 如果未能立即准予采取措施，损失不会而且不可能通过损害赔偿得以补偿。



**Non-Infringement and Invalidity:** several national legislations allow that non-infringement and invalidity is filed under the judicial route. If the invalidity is filed “alone” it shall be filed with EUIPO, while if it is filed in addition with non-infringement claim can be filed directly with the National judicial Court.

**确认不侵权之诉和商标无效:** 许多国家法律允许, 通过司法途径提起确认不侵权之诉和商标无效。如果单独提出商标无效, 则向欧盟知识产权局申请。如果同时提出确认不侵权之诉, 则直接向国家法院申请。

- (1) LINDT v. HAUSWIRTH | LINDT 诉. HAUSWIRTH
- (2) BALBCARE v. BALBCARE / BALBCARE 诉 BALBCARE
- (3) COLOURBLIND v. COLOURBLIND / COLOURBLIND 诉 COLOURBLIND
- (4) Doggis v. Doggis / Doggis 诉 Doggis
- (5) GUGLER v. GUGLER / GUGLER 诉 GUGLER
- (6) LLRG5 v. LLRG5 / LLRG5 诉 LLRG5
- (7) LUCEO v. LUCEA LED / LUCEO 诉 LUCEA LED
- (8) VdeV v. VdeV / VdeV 诉 VdeV
- (9) SIMCA v. SIMCA / SIMCA 诉 SIMCA
- (10) URB v. URB / URB 诉 URB

*Chocoladefabriken Lindt & Sprüngli AG v. Franz Hauswirth GmbH* (also known as *Lindt v. Hauswirth*) is the first decision on “bad faith” as ground of invalidity - Art. 51(1)(b) Reg. No 40/94 of the Community Trade Mark (now Art. 52(1)(b) Reg.(EC) No 207/2009).

*Chocoladefabriken Lindt & Sprüngli AG 诉Franz Hauswirth GmbH*案（也叫作Lindt诉Hauswirth案）是第一次依据欧洲理事会关于共同体商标的第40/94号条例第51(1)(b)条（现为欧盟第207/2009号条例第52(1)(b)条）规定，以“恶意”为商标无效理由做出判决的案例。



- In 1950 Lindt starts to market a chocolate bunny (in Austria in 1994).
- 1950年，Lindt公司开始销售一种兔形巧克力（1994年开始在奥地利销售）
- In 2000 Lindt obtains CTM covering “chocolate” in Class 30.
- 2000年，Lindt公司注册了一个涵盖“巧克力”的第30类欧共体商标
- Hauswirth markets chocolate bunnies in Austria since around 1962.
- Hauswirth公司从1962年左右开始在奥地利销售兔形巧克力
- Hauswirth bunny characteristics: no brand name (although there is a label underneath); usually decorated with a ribbon, but not a bell;
- Hauswirth公司兔形巧克力的特点：无品牌名（尽管底部有标签）；通常有一条彩带做装饰；但是没有铃铛
- Following registration, Lindt sued Hauswirth for trade mark infringement.
- 注册商标之后，Lindt公司起诉Hauswirth公司商标侵权
- Hauswirth counterclaimed invalidity (due to bad faith).
- Hauswirth公司反诉Lindt公司的商标无效（因为属于“恶意”注册）

Austrian Supreme Court considered that (i) there was a likelihood of confusion between the two presentations; (ii) a number of other models have been marketed since the 1930s, bearing a greater or lesser degree of similarity with Lindt’s presentation, and Lindt was aware of at least some of those models before it applied to register its trade mark; (iii) before Lindt's application was made, the various producers, or at least some of them, had acquired ‘valuable rights’ to the protection of their products under Austrian competition law and German trade mark law, even though none of them had been registered; (iv) by registering the mark, Lindt wanted to ‘create a basis for taking proceedings against other manufacturers’ products which were already available and at least some of which were known to it in Germany’.

奥地利最高法院认为 (i) 这两种标志之间存在混淆可能性；(ii) 从20世纪30年代开始就有大量其他型号的兔形巧克力在市场销售，多多少少都与Lindt商标存在一定相似性，而且Lindt在申请注册其商标之前至少知道其中几种；(iii) 在Lindt提交商标申请之前，各种制造商或者至少其中一些都已经依据《奥地利竞争法》和《德国商标法》获得保护他们产品的“有价值权利”，尽管没有一家注册过商标；(iv) 通过注册商标，Lindt意在“创造一种针对其他制造商产品发起诉讼的依据，而这些产品已经在市场销售，并且Lindt至少知道其中在德国销售的一些产品。

Court conclusions: in order to determine whether the applicant is acting in bad faith within the meaning of Article 51(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, the national court must take into consideration all the relevant factors specific to the particular case which pertained at the time of filing the application for registration of the sign as a Community trade mark, in particular:

法院结论：为了确定申请人是否构成1993年12月20日通过的有关共同体商标的第40/94号欧洲理事会条例第51(1)(b)条所定义的恶意注册，奥地利国家法院考虑了与该案件相关的具体因素，即在提交该欧共体商标注册申请时相关的一些因素，尤其是：

- the fact that the applicant knows or must know that a third party is using, in at least one Member State, an identical or similar sign for an identical or similar product capable of being confused with the sign for which registration is sought;
- 申请人知道或者应当知道有一个第三方至少正在一个成员国使用与其所试图注册的商标相同或近似的标志，该标志所应用的产品也与其所试图注册的商标适用的产品相同或相近，从而足以造成混淆性；
- the applicant's intention to prevent that third party from continuing to use such a sign; and
- 申请人的意图是阻止该第三方继续使用标志；以及
- the degree of legal protection enjoyed by the third party's sign and by the sign for which registration is sought.
- 第三方标志以及申请人试图注册的商标受到法律保护的程度。



## BALBCARE v. BALBCARE BALBCARE 诉 BALBCARE

The Invalidity applicant is the owner of the Brazilian TM BALBCARE for nail care products in Class 3. In 2011 it signed a distribution agreement in the EU with a company, who applied for a FR mark BALBCARE 2011 and an EUTM in 2014. By late 2011, the distribution agreement was suspended. The owner of the Brazilian TM requested the invalidity of the EUTM because it was registered in bad faith. The Cancellation Division declared that the **invalidity applicant cannot be expected to prove a negative fact, such as the absence of consent. A mere statement that the filing was made without its consent is generally sufficient. It is the EUTM proprietor who has to prove that the filing was authorized.** The finding of bad faith does not require a contractual relationship at the time of filing. A direct or indirect relationship between the parties prior to the filing may be enough. The Cancellation Division declared the mark invalid. No appeal was filed.

无效请求人拥有适用于指甲护理产品的一个巴西商标BALBCARE (第3类)。2011年, 该商标所有者在欧盟与一家公司签署了一份分销协议, 该公司在2011年申请了一个法国商标BALBCARE, 然后在2014年申请了一个欧盟商标。分销协议在2011年后半年中止。巴西商标的所有者请求宣告该欧盟商标无效, 认为其属于恶意注册。撤销处判定: **无效请求人无需证明是否存在消极事实, 比如注册时未经同意; 一般情况下, 无效请求人只需声明商标注册申请并未经过自己的同意即可。欧盟商标所有者有责任证明提交该商标申请是经过授权的。**这一“恶意”发现并不要求在提交申请时存在契约关系。双方在申请之前的直接或间接关系也可以构成判决所依据的充分理由。撤销处判定该商标无效。任何一方无上诉。

**The Cancellation Division (CD) declared invalid the registration of the EUTM as it was applied for in bad faith. No appeal was filed.**

**撤销处宣布该欧盟商标无效, 因为它属于恶意申请。双方均未提出上诉。**



The invalidity applicants invoked a number of earlier marks DOGGIS that they had registered in Chile and Uruguay. When they tried to register the mark DOGGIS in Spain, they found that it had been registered for the same services and with identical graphic element in Spain and in the EU. They claimed that the EU mark had been applied for in bad faith. The Cancellation Division rejected the invalidity application, but the Board of Appeal declared the registration invalid.

无效请求人援引了之前在智利和乌拉圭注册过的一系列标志DOGGIS。当试图在西班牙注册DOGGIS标志时，他们发现该标志在西班牙和欧盟已经被注册，且用于同样的服务，附带相同的图形元素。他们起诉该欧盟商标是恶意申请。撤销处驳回其无效请求，但是上诉委员会判定在欧盟注册的这个商标无效。

It found that, at the time of the EUTM application, the EUTM applicant was aware of the existence of the earlier figurative Chilean marks, **identical to the sign applied for. The Board found that such a coincidence could not be the result of a fortuitous identity.** The General Court confirms the findings of the Board of Appeal.

委员会发现，在申请该欧盟商标时，欧盟商标申请人已经知道存在与其所申请的标志相同的智利图形商标。**委员会发现这一巧合不可能是一次偶然事件。**普通法院确认了上诉委员会的发现。

The Board of Appeal declared invalid the registration of the EUTM as it was applied for in bad faith. The General Court confirmed this decision.

上诉委员会判定该欧盟商标注册属于恶意行为，因而宣告其无效。普通法院确认了这一决定。

# LLRG5 v. LLRG5

## LLRG5 诉 LLRG5

The Court found that it was apparent from the case file that Mr. R. could not have been unaware that the invalidity applicant used the sign LLRG5 as its company name (para. 47). Furthermore, although it was not possible to establish with certainty what was the common intention between the parties with regard to the sign, no evidence was provided that could lead to the conclusion that Mr. R. had reserved rights to himself over that name (para. 52). Therefore, the EU trade mark proprietor did not prove the existence of the exclusive rights it alleged (Para. 58). The Court stated that Mr. R. did not give the invalidity applicant the possibility of considering whether it was appropriate to oppose the application for registration of the sign at issue, which led to the finding that the application could be held to be a “concealed act”, carried out through an intermediary, with the intention of preventing the invalidity applicant from being able to use the sign (para. 71). In this light, the application for registration of the contested mark was made in bad faith (para. 73).

在该案件中，法院发现很显然R先生不可能不知道无效请求人使用的标志LLRG5是自己公司的名称（第47款）。进一步讲，尽管无法确定双方针对该标志的共同意图是什么，但是没有证据表明R先生对于该名称保留有权利（第52款）。因此，欧盟商标所有者没能证明自己主张的排他权的存在性（第58款）。法院指出，R先生没有向无效请求人提供机会，来考虑反对申请注册涉争商标是否合适；这一行为导致该商标申请可能被视为一种通过中介机构开展的“隐藏行为”，其意图在于阻止无效请求人使用该标志（第71款）。鉴于此，法院判定该涉争商标的注册申请属于恶意行为（第73款）。

An invalidity applicant claimed before EUIPO that the EU trade mark LLRG5 had been registered in bad faith. After EUIPO upheld the invalidity application, the EU trade mark proprietor brought an action before the General Court alleging inter alia that EUIPO had infringed Article 52(1) (b) of the EU trade mark regulation. The Court dismissed the appeal  
无效请求人向欧盟知识产权局投诉欧盟商标LLRG属于恶意注册。在欧盟知识产权局支持该无效申请之后，该欧盟商标所有者向欧洲普通法院提起诉讼，指控欧盟知识产权局违反《欧盟商标条例》第52(1)(b)条规定。法院驳回上诉。

# LUCEO v. LUCEA LED

## LUCEO 诉LUCEA LED

The GC found this filing strategy incompatible with the objectives of the EUTM Regulation and qualified it as an abuse of law (p. 52). It also noted that Mr A. stated that he did not intend to use the mark at issue and was unable to indicate the name of the clients who expressed an interest in that mark and requested payment of 75 000 € from the intervener. Bad faith exists inter alia where trade mark applications are diverted from their initial purpose and filed speculatively or solely with a view to obtain financial compensation.

普通法院发现，这一商标的申请策略与《欧盟商标条例》的目的不相符，因此判定其属于滥用法律（第52款）行为。法院还注意到：A先生声称自己没有使用涉争标志的意图，无法指出对该标志感兴趣的客户名称，且请求参加诉讼人支付7.5万欧元。如果商标申请与其初始目的相背离，是为了投机或者仅为获得财务补偿之目的而申请，则构成恶意行为。

**The Cancellation Division (CD) and the Board of Appeal (BoA) declared invalid the registration of the EUTM as it was applied for in bad faith. The General Court confirmed this decision**

**撤销处和上诉委员会判定该欧盟商标属于恶意申请，宣告该商标无效。普通法院确认了这一决定。**



CD: it is strongly against honest commercial practice that a person who led a company into insolvency and had to sell its TMs, would acquire the same (with geographically extended protection) just by creating a new company. In view of all the circumstances taken together, the current owner SANDYS (whose CEO is Mr. A. Tacchini) should be considered to be the real applicant for the contested EUTM. Bad faith implies proving that at the time of filing, the EUTM owner was aware that it was causing harm to the invalidity applicant and that this harm was a consequence of its reproachable conduct from a moral or commercial point of view. Mr. A. Tacchini, CEO of the EUTM owner, must have been aware that it is ethically unacceptable and contrary to honest and fair commercial practices for his new company to own the CTM identical to the national marks that he transferred to a third party when his other company was insolvent.

法院结论：因为公司破产而不得不出售商标的人，仅通过成立一家新公司就能获得同样的商标保护（保护的地理范围得到扩展），这种做法是严重违背诚信商业实践准则的。考虑到所涉及的全部情况，应当认为SANDYS（其首席执行官为A. Tacchini先生）的当前所有者是涉争欧盟商标的真正申请人。要认定该商标属于恶意注册，即需要证明：在申请时，该欧盟商标所有者知道自己会对无效请求人造成伤害，且从道德或商业角度来看，该伤害正是自己的这种不当行为所造成的。该欧盟商标所有者的首席执行官A. Tacchini先生应当知道，在前公司破产时将前公司所拥有的国家商标转让给第三方之后，再让自己的新公司拥有一个与该国家商标相同的欧共同体商标，这种做法不仅在道德上不可接受，而且也与公平诚信的商业实践相违背。

The Cancellation Division (CD) declares invalid the registration of the EUTM as it was applied for in bad faith. An appeal is pending before EUIPO Boards of Appeal

撤销处判定该欧盟商标属于恶意申请，宣告其无效。商标所有者不服，已经向欧盟知识产权局上诉委员会提出上诉，目前正在审理中。

SIMCA SIMCA  
SIMCA 诉 SIMCA

According to the General Court, in order to establish bad faith account may be taken of the origin of the word or the sign which forms the mark at issue and of the earlier use of that word or sign in business as a mark, in particular by competing undertakings, and of the commercial logic underlying the filing of the application for registration of that word or that sign as an EU trade mark. The mark SIMCA has been used for cars since 1930 and the invalidity applicant has trademark protection for SIMCA in different Member States as France, Germany, Spain etc. for goods in class 12.

根据普通法院的说法，要确定是否存在恶意行为，需要考虑构成涉争商标的文字或标志的起源；该文字或标志之前被用作商业标志的情况，尤其是，是否被竞争对手所使用过；以及申请将该文字或标志注册为欧盟商标时存在的商业逻辑。SIMCA标志自1930年就一直用于汽车，无效请求人在不同的成员国，比如法国、德国、西班牙等，都已针对第12类商品为SIMCA取得商标保护。

However, the mark has not been used since 1980. At the date of filing of the EUTM, the mark still had a certain degree of reputation among the public interested in cars. The EU trade mark proprietor knew this residual reputation of the SIMCA marks and was looking for an appropriate mark which was no longer used and which accordingly had no legal protection. The Court finally concluded that the real purpose of the EU trade mark proprietor was to ‘free-ride’ on the reputation of the invalidity applicant’s registered marks and to take advantage of that reputation. The judgement emphasizes that the clear and evident intention to take advantage of the residual reputation of the sign SIMCA on the motor vehicle market, to create an association with the earlier marks and to compete with those earlier marks if they were re-used by the invalidity applicant is to be considered as bad faith in the sense of Article 52 (1) (b) of the EU trade mark Regulation (para 63). This conclusion is not based on the “offer of compensation” to the invalidity applicant (para. 70). The fact that the EU trade mark proprietor had started the use of the registered SIMCA mark is not relevant (para. 74). Also the fact, that the EU trade mark proprietor worked in the past for the invalidity applicant is not decisive for the outcome (para. 79).

但是，自1980年开始，这个标志就没有再使用过。在提交欧盟商标申请之时，该标志在对汽车感兴趣的公众之中依然具有一定知名度。欧盟商标所有者知道SIMCA标志的这种残留知名度，而且当时正在寻找一种不再被使用，因此不再受法律保护的合适标志。法院最终判定欧盟商标所有者的真正目的是“搭无效请求人所注册商标的知名度的顺风车”，并从这种知名度中获益。判决强调了这种清楚和明显的意图：利用机动车市场SIMCA标志的残留知名度；创造一种与在先标志的关联；如果无效请求人再次使用在先标志，则与其产生竞争。考虑到这几项因素，按照《欧盟商标法条例》第52(1)条之规定（第63款），法院判定这种行为构成恶意注册。这一判决没有以向无效请求人“提供补偿”为依据（第70款）。欧盟商标所有者已经开始使用所注册的SIMCA标志这一事实与案件无关（第74款）。同时，欧盟商标所有者为无效请求人工作过这一事实也不是判决的决定性因素（第79款）。

An invalidity applicant claimed before EUIPO that the EU trade mark SIMCA had been registered in bad faith. After EUIPO upheld the invalidity application. The Court dismissed the appeal.

无效请求人向欧盟知识产权局投诉欧盟商标SIMCA属于恶意注册。欧盟知识产权局支持这一无效申请。法院驳回上诉，维持欧盟知识产权局的判定。

# URB URB URB 诉URB

The General Court recalled that, in assessing whether a mark has been registered in bad faith, account may also be taken of the commercial logic underlying the filing of the application for registration of an EU trade mark. Even in circumstances where several producers were using, on the market identical or similar signs for identical or similar products, capable of being confused with the sign for which registration was sought, the EU trade mark proprietor's registration of the sign may still be in pursuit of a legitimate objective. The Court held that it was understandable from a commercial point of view that the EU trade mark proprietor wished to extend the protection of the URB trade mark by registering it as an EU trade mark. In that respect, the evidence on file showed that, during the period which preceded the filing, the EU trade mark proprietor used the trade mark, through a connected company, and generated turnover from goods marketed under the trade mark in several Member States, which was a plausible incentive for filing an application for the registration of an EU trade mark. The invalidity applicant did not establish that it was the EU trade mark proprietor's intention to exclude it from the market. The fact that the EU trade mark proprietor knew or should have known that a third party (i.e. the invalidity applicant in this case) has long been using, in at least one Member State, an identical or similar sign for an identical or similar product capable of being confused with the sign for which registration is sought is not sufficient, in itself, to permit the conclusion that the EU trade mark proprietor was acting in bad faith when filing the application.

普通法院回顾道，在评估一个商标是否为恶意注册时，还需要考虑申请注册欧盟商标时存在的商业逻辑。即使市场上有多个生产商所使用的标志与所试图注册的标志相同或近似，且用于与所试图注册的标志适用的产品相同或近似的的产品上，欧盟商标所有者对该标志的注册依然可能在合法目的范围之内。法院认为，从商业角度来看，该欧盟商标所有者希望通过将URB标志注册为一个欧盟商标来扩展该标志的受保护范围，这种行为是可以理解的。在这方面，商标申请资料表明，在申请该商标之前，该欧盟商标所有者通过一个关联公司使用该商标，并在多个成员国从该商标名下的产品获得收入，这是促使其申请将该商标注册为一个欧盟商标的可信刺激因素。无效请求人没有证明该欧盟商标所有者的意图是将无效请求人排除在市场之外。欧盟商标所有者知道或者应该知道有一个第三方（即，这个案件中的无效请求人）至少在一个成员国已经长期使用与其所试图注册的商标相同或近似的标志，用于相同或近似的足以造成混淆的产品；但是这一事实本身并不足以让法院认定欧盟商标所有者在提交注册申请时是恶意的。

An invalidity applicant claimed before EUIPO that the EU trade mark SIMCA had been registered in bad faith. EUIPO upheld the invalidity application. The Court dismissed the appeal.

无效请求人向欧盟知识产权局投诉SIMCA商标为恶意注册。欧盟知识产权局支持这一申请。法院驳回上诉。

## VENMO v. VEN MONEY VENMO 诉 VEN MONEY

Hub Culture Ltd is a global collaboration network. In 2007, it established a global digital currency called VEN and holds a US word mark by the same name. Venmo Inc is a US company which was set up in 2009 and is now owned by PayPal Inc. It provides online payment services in the US using the unregistered mark VENMO.

Hub Culture有限公司是一个全球协作网络；2007年，它建立了一种名为VEN的全球数字货币，并以同样的名称注册了一个美国文字商标。Venmo Inc.是一家于2009年成立的美国公司，目前归PayPal Inc.所有；它利用未注册的标志VENMO在美国提供在线支付服务。

In June 2010, Hub Culture wrote to Venmo claiming that their use of the sign VENMO could lead to confusion in the US market and proposed exploring the possibility of a commercial resolution. However, far from following through with their proposal, Hub Culture filed an application with EUIPO for the registration of the sign VENMO as an EU trade mark. They did not inform Venmo of their application.

2010年6月，Hub Culture致函Venmo，声称Venmo对VENMO标志的使用会在美国市场造成混淆，并提议双方探索通过商业方式来解决这一问题的可能性。但是，Hub Culture没有按照自己的提议进行，而是向欧盟知识产权局提交了一份申请，要求将VENMO标志注册为欧盟商标；并且，没有这一情况通知Venmo。

In April 2011, VENMO was registered as an EU trade mark. Venmo raised proceedings to invalidate the trade mark and was successful in the Cancellation Division. However, the decision was overturned by the Board of Appeal, and Venmo appealed to the General Court. 2011年4月，VENMO被注册为一个欧盟商标。Venmo发起无效该商标的程序，并且获得撤销处的认可。但是，这一决定又被上诉委员会推翻，所以Venmo又向普通法院上诉。

An invalidity applicant claimed before EUIPO that the EU trade mark VENMO had been registered in bad faith. EUIPO upheld the invalidity application. The Court dismissed the appeal.

无效请求人向欧盟知识产权局提出无效请求，声称VENMO商标属于恶意注册。欧盟知识产权局支持该无效申请。法庭驳回上诉。