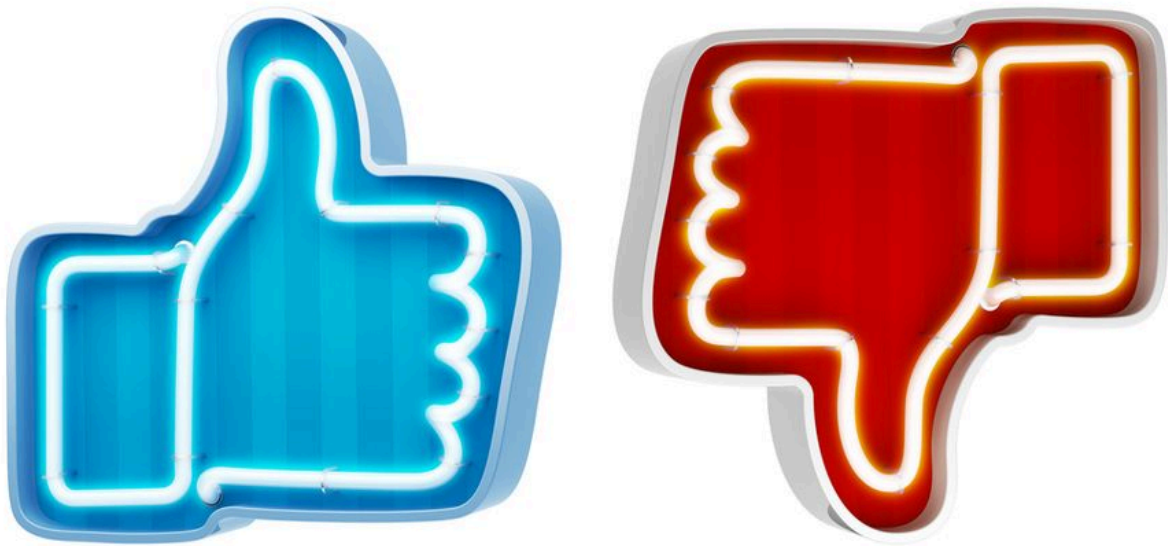


Meta: no likelihood of confusion between two thumbs up

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SWITZERLAND

Legal updates: case law analysis and intelligence

- Swiss Federal Administrative Court affirmed IGE decision to deny likelihood of confusion between Meta's and a third-party thumbs up
- IGE held that while the services were identical or highly similar, the visual similarities were limited to the weakly distinctive motif of a thumbs up
- Court affirmed trademark protection does not extend to a mere motif; the different designs and use of "Like" made the signs sufficiently different

The [Swiss Federal Administrative Court](#) affirmed a decision of the [Federal Institute of Intellectual Property](#) (IGE), which previously denied a likelihood of confusion between Meta Platforms Inc's LIKE – THUMB UP device mark and a third-party thumb-up mark (Case [4](#) of 25 June 2024).

Background

An individual filed the following THUMB UP blue figurate mark (Swiss Trademark 795892) for various services in Classes 35, 38 and 45:



Meta Platforms opposed the trademark for Class 45 based on its earlier LIKE mark (Trademark 631716), also registered in Class 45



The IGE rejected the opposition in its decision of 18 January 2024. It reasoned that while the services were identical or highly similar, the visual similarities were limited to the weakly distinctive motif of a hand clenched into a fist with a thumb pointing upwards. Thus, the contested trademark complied with the distance between the signs required under trademark law.

Meta Platforms appealed the decision at the Federal Administrative Court, arguing that the signs in question were similar, as both trademarks showed the same motif. Furthermore, Meta Platforms' motif should be considered as a very well-known trademark.



Decision

The court referred to its earlier practice. As a rule, a matching motif alone does not establish trademark similarity. It is the specific trademark that is protected and not the idea contained therein. Therefore, a legally relevant similarity exists only if the signs implement the same motif in a visually similar way.

The court stated that both trademarks show a fist with a thumb pointing upwards. If the figurative elements are considered in isolation, the (abstract) motif 'thumbs up' remains memorable. However, the protection of a trademark does not extend to the mere motif. Due to the different designs of the wrist area, the distantly similar signs are recognisably different from each other. The fact that the opposing mark also contains the term "Like" contributes to the distinction. The overall impression of the marks is therefore quite different. Even though customers pay little attention to the services, they easily recognise the differences. Thus, the court dismissed the appeal.

Comment

This decision highlights the important principle in trademark law that a trademark never protects a motif or idea itself, only the trademark as registered.

This principle was already demonstrated in relation to an APPLE trademark against an individual's trademark, when the court dismissed the opposition of  against 

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