

## Tequila Legado fails to register EU trademark for 'T'-shaped bottle cap

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The EU Intellectual Property Office has upheld a rejection of Tequila Legado's trademark application for its "T"-shaped bottle cap, ruling the shape lacks distinctiveness from common caps in the alcoholic beverages market. The office dismissed Legado's arguments that the shape was creative and a protected design right in the UK and EU. It held that applications to register a trademark in the EU need to be assessed solely on the basis of the EU Trade Mark Regulation.

Tequila Legado's application to register a trademark for its "T"-shaped light brown and black bottle cap was rejected by the EU Intellectual Property Office, or EUIPO, on Friday.

The EUIPO held the shape mark "did not depart significantly" from the shape expected by consumers for goods classified as alcoholic beverages except beer; distilled beverages; and "Tequila" (geographical indication) agave spirit drink and "Mezcal" (geographical indication) agave spirit drink. The rejection follows EUIPO's initial objection to Legado's application in April.

Legado in its application argued that the shape it intended to trademark is creative and possesses individual character as it is a registered design in the UK and the EU.

Rejecting Legado's argument, the office said a design right decision given either in a member country or in a third country such as the UK is not binding on the EUIPO.

Moreover, Legado's shape was registered under national design right regulations which differ from EU trademark law, and therefore cannot be considered relevant in the present case, the office said.

"The registrability of a sign as an EUTM (EU Trade Mark) must be assessed solely on the basis of the EUTMR (EU Trade Mark Regulation), as interpreted by the EU judiciary, and not on the basis of previous Office practice," the EUIPO said.

Dismissing Legado's application, the EUIPO held that the mark applied for by Legado lacks a distinctive character and the colors of the cork are not readily perceptible when the cork is placed on the bottle.

"There is nothing unusual about either the bottom or the top part of the cap or stopper, nor of the item considered as a whole," Valeria Nimmo wrote in her ruling, calling the shape an "extremely common feature" of corks in the alcoholic beverages market.

The shape of the cap or stopper applied for was a typical piece of cork or plastic that is pushed into a bottle to close it with a larger round top of flat plastic, Nimmo added.

The EUIPO said Legado tried to trademark a bottle cap similar to the classic look of "T"-shaped corks — thin in the part of the cork that enters the neck of the bottle and larger in the top and flat part that remains out of the bottle neck.

The EUIPO also rejected Legado's argument that the presence of two colors in the shape — light brown and black makes it unusual.

In assessing the distinctiveness of the shape against all kinds of alcoholic beverages and relevant packaging, the EUIPO held that Legado's selection of six tequila and mezcal brands in support of its application was "too narrow" to establish how the shape applied for differed from the broader class of goods.

Further, Legado cited only the most famous and best-selling brands of tequila and mezcal in the world in its application, the EUIPO said.

"There are many other extremely well know and famous brands of tequila and mezcal on the market that have caps or stoppers analogous to that in the application. This is a well-known fact in this segment, which does not need to be proven

and can be easily ascertained through a simple walk in any winery or supermarket aisle for alcoholic beverages, also online," the EUIPO said.

The EUIPO said Legado can appeal the decision within the next two months and the notice of appeal must be filed in writing.

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**Industries:** Consumer Products

**Geographies:** Europe, European Union Member States

**Topics:**

Trademarks