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Judgment of the Court in Case C-334/22 | Audi (Emblem support on a radiator grille)

European Union trade mark: a car manufacturer can prohibit the use of a sign identical or similar to the trade mark it owns for spare parts

That is the case when the spare part contains a component designed to attach the manufacturer's emblem and whose shape is similar or identical to that mark.

The car manufacturer Audi is the owner of the following European Union figurative mark:



registered for vehicles, spare parts and automotive accessories.

That mark is reproduced and used as an Audi emblem. A Polish trader is offering for sale, by advertising on his internet site, non-original radiator grilles adapted for old Audi car models. Those radiator grilles contain a component similar or identical in shape to that trade mark and designed to hold the Audi emblem.

Audi is taking legal action against that retailer. It claims that he should be prohibited from marketing non-original radiator grilles bearing a sign identical or similar to the AUDI trade mark. He has referred the matter to the Court of Justice in order to determine whether the marketing of car spare parts such as the radiator grilles in question constitutes, under EU law ¹, 'use of a sign in the course of trade' liable to impair the functions of the AUDI trade mark. He also questions whether the proprietor of that trade mark may prohibit a third party from such use.

In its judgment, **the Court answers in the affirmative**. It points out, first of all, that the repair clause provided for in respect of designs is not applicable ². Next, it noted that, in the present case, the radiator grilles did not come from the proprietor of the AUDI trade mark and were placed on the market without its consent. However, the element designed for the attachment of the Audi emblem is incorporated into them for the purposes of the marketing of the radiator grilles by the third party. It is visible to the public wishing to purchase such a spare part. That could constitute **a material link between the spare part in question and the proprietor of the AUDI trade mark**. Consequently, such use is **liable to infringe the functions of the trade mark, which consist in particular in guaranteeing the origin or quality of the goods**.

The Court leaves it to the national court to determine, first, whether the element of the radiator grille in question is identical with, or similar to, the AUDI trade mark and, secondly, whether the radiator grille is identical with, or similar to, one or more of the goods in respect of which that trade mark is registered. Nevertheless, if the national court considers that the AUDI trade mark has a reputation within the EU, its proprietor must, under certain conditions, enjoy enhanced protection. In that case, it is irrelevant whether the radiator grilles at issue and the goods for which that trade mark is registered are identical, similar or different.

The Court also confirms that, where the choice of the shape of the element designed for the attachment of the car

manufacturer's emblem is guided by **the desire to market a radiator grille which resembles the original radiator grille as closely as possible**, EU law does not limit the exclusive right of that manufacturer, the proprietor of the trade mark, to prohibit the use of an identical or similar sign³.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ [Regulation \(EU\) 2017/1001](#) of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark.

² A sign protected as an EU trade mark may also, in certain circumstances, be protected as a Community design. The so-called 'repair clause' provided for in Council [Regulation No 6/2002](#) of 12 December 2001 on Community designs places certain limitations on design protection. However, according to the Court, that clause applies without prejudice to the provisions of EU law relating to trade marks and does not contain any derogation from EU trade mark law.

³ In particular, that cannot be equated with the use of the trade mark to indicate the intended purpose of a product as an accessory or spare part.