



Press release of August 24, 2015

## **BARDEHLE PAGENBERG victorious in invalidating European part of International Registration No. 797277 “HOT” before General Court**

On July 15, 2015, the General Court of the European Union, upon request of Australian Gold LLC, represented by BARDEHLE PAGENBERG, found the European part of International Registration No. 797277 “HOT”, registered on behalf of Effect Management & Holding GmbH, partially invalid (Case T-611/13).

The Court not only confirmed the decision of OHIM’s Board of Appeal as regards declaration of invalidity for “*massage oils, gels*” in class 3 and “*lubricants for pharmaceutical use*” in Class 5 but also annulled the contested decision and declared the mark invalid for “*perfumes, essential oils, cosmetics, in particular shampoos, shower gels, body lotions, face creams*” (all in Class 3).

The Court followed Australian Gold’s arguments as to the descriptive nature of HOT for these goods. Interestingly, however, as regards the parallel, favourable decision of the German Federal Supreme Court (see [http://www.bardehle.com/en/news/news\\_of\\_the\\_firm/archive/release/article/bardehle-pagenberg-successful-in-invalidating-german-part-of-international-registration-no-797277.html](http://www.bardehle.com/en/news/news_of_the_firm/archive/release/article/bardehle-pagenberg-successful-in-invalidating-german-part-of-international-registration-no-797277.html)), which had found the same mark invalid also for a range of other goods in classes 3 and 5 and which Australian Gould had presented to the Court and invoked as additional argument for the invalidity of the contested mark, the General Court refused to accept these arguments, pursuant to a theory often repeated by the Luxembourg courts that the Community trademark system is an autonomous system and that therefore national decisions, while deserving respect, are not in any way “binding” for the European Union jurisdictions (OHIM or the Luxembourg courts).

The time limit for an appeal – which is not extendible – expires on September 28, 2015.

Representatives of Australian Gold, Inc.:

**BARDEHLE PAGENBERG** (Munich):

Dr. Henning Hartwig (Attorney-at-Law, Partner)

Professor Dr. Alexander von Mühlendahl, LL.M. (Attorney-at-Law)

### **BARDEHLE PAGENBERG**

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Representatives of Effect Management & Holding GmbH:

**Helga Pernez** (Paris; Attorney-at-Law)

General Court of the European Union (Second Chamber):

**Maria Eugénia Martins de Nazaré Ribeiro** (Presiding Judge)

BARDEHLE PAGENBERG combines the professional expert know-how of attorneys-at-law and patent attorneys, European patent attorneys, European trademark attorneys, technical advisors and qualified legal counsel. Hand-selected teams of patent attorneys and attorneys-at-law provide top-quality services tailored to the specific needs of the client and the characteristics of the case.

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