

## Dior Did Not Saddle on Distinctive Character of Its Iconic Bag

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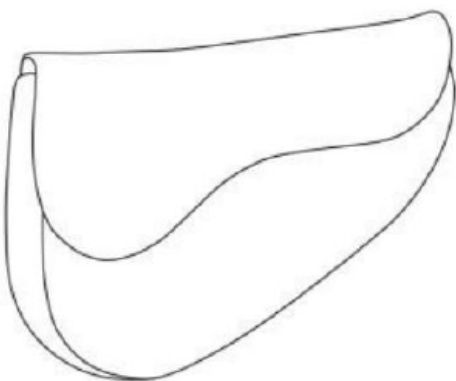
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Another unfavourable [decision](#) on non-traditional trade marks has landed, now in relation to Dior's iconic Saddle bag. The EUIPO's Second Board of Appeal decided that Dior's Saddle bag is not distinctive with respect to handbags. The decision is seen as surprising yet not unpredictable, given the recent history of unsuccessful trade mark applications for 3D signs (for example, see our previous article on the Moon Boot case [here](#)).

The Dior Saddle bag first appeared in the Spring 2000 ready-to-wear collection. The bag immediately became much-wanted piece worn by many celebrities. After many years, it was brought back into the Dior Autumn/Winter 2018 collection (see [here](#)).

### Case details

Dior applied to register the below 3D shape for goods in classes 9 and 18. The EUIPO partially refused the application considering that the shape did not significantly depart from the norm in relation to certain goods in class 18 (i.e., bags, handbags, pouches (leather goods), travel cases (leather goods), toilet and make-up cases (empty)).



In Dior's appeal, the brand claimed that the EUIPO did not identify the relevant public at issue. Dior being a luxury fashion house, the average consumers should be those with a high level of attention, considering the expensive and luxurious nature of the goods. Dior also claimed that the shape had

acquired distinctive character through use over the years.

The EUIPO Second Board of Appeal confirmed the first instance judgement and refused registration for the 3D sign for some of the goods in class 18. Specifically, the BOA held that:

- The relevant public should not be confined to consumers with an ‘above-average’ level of attention. The EUIPO acknowledged that Dior’s products are generally expensive, however due the wide range of prices of the goods in question and a variety of marketing channels, the goods should not be considered products with an exclusive nature.
- The average consumer does not necessarily presume the origin of a product based on a shape of a product, in absence of any graphic or textual elements. Consequently, only marks that diverge *significantly* from the norm or customs of the sector are capable of ‘fulfilling the essential function of a trade mark and are not devoid of distinctive character’ and in this case, online searches revealed handbags with similar shapes.
- The Dior Saddle bag combines elements that are common for the goods concerned, and the different elements are not significant and immediately apparent to consumers.

This led the EUIPO to conclude that the shape does not significantly depart from the norm resulting in refusal of the mark for bags, handbags, pouches (leather goods), travel cases (leather goods), toilet and make-up cases (empty). The EUIPO did allow the application to move forward for the other goods in class 9 and 18 (namely “Eyeglasses, sunglasses, sports glasses; spectacle frames, cases, bags, satchels and protective covers for computers, tablets, mobile phones and MP3 players; chains for glasses” and “trunks and suitcases; garment bags for travel; backpacks, traveling bags; cases intended to contain toiletries; pouches (leather goods), leather boxes; umbrellas; leather straps”).

## Conclusion

This case confirms once again that non-traditional marks with a reputation are not guaranteed trade mark protection and that the status of the market is carefully looked at by the EUIPO.

For the time being, it seems that considering a broad range of goods may at least provide brands with some level of protection and enforcement strategies aimed at keeping the market clear from similar shapes may pay off in the context of obtaining exclusive rights in 3D signs.

As more and more brands are seeking to obtain trade mark protection for 3D signs, this is an area worth monitoring closely to identify which iconic shapes, in the end, will pass the test of a shape significantly different from the norm.

*Sophie Verstraeten also contributed to this article.*

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