

Industry Update

Red Bull might 'give you wings' but without the blue and silver colours



Can anyone have monopoly on two colours ? A recent decision by the CJEU has some answer to this vexed question.

In 2002, Red Bull had filed two colour combinations (blue and silver) to be used in equal proportions as Union trademarks, which were further registered as Community trademarks in 2003. The two symbols were represented as two parallel vertical blocks. Optimum Mark (Poland) had opposed this combination of colours on various grounds including that combination of colours is generic and imprecise.

The European Union Intellectual Property Office (EUIPO) being the court at the first instance declared the mark invalid based on the arguments of Optimum Mark (Poland) that the arrangement of the said colours are imprecise.

The said decision was upheld by the European Court of First Instance (CFI) as well, stating that the combination of blue and silver colour must be 'defined with reasonable and particular precision.'

The description of the systematic arrangement of the colours is a valid requirement for a colour combination mark," says the CJEU (Court of Justice of the European Union).

Going by the requirements of Article 4 EU Trademark Regulation, CJEU simplified for Red Bull that application for the usage of the two colours must be in a graphic representation clearly defining the subject – matter with precision.

Comparatively, in **India**, combination of colors would be recognized as a valid trademark, as long as the owner of the mark is able to prove that the mark is registered, has prior use. In India, Red Bull has successfully enforced their mark including the color combination against various entities.