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The CJEU's Judgment in IKEA v Vlaams Belang (CJEU, C-298/23) – How Much Political Expression Can EU Trade Mark Law Accommodate?

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1. In its Grand Chamber judgment of 8 September 2026,IKEA v Vlaams Belang (C-298/23),

[1] the Court of Justice of the European Union (CJEU) confirmed that freedom of expression, including political parody, may justify the unauthorised use of a reputed trade mark. The judgment is an important development in EU trade mark law. Whether it provides meaningful protection for political expression is another question.
2. The dispute arose from the Belgian political party Vlaams Belang's 'IKEA-Plan' (Immigratie Kan Echt Anders, or 'Immigration Really Can Be Different') (see Figure 1), an anti-immigration campaign presenting 15 proposals through IKEA-style assembly instructions, as solutions ready for the government to assemble (see, e.g., Figure 2). IKEA brought infringement proceedings, arguing that the use of its trade marks conflicted with its policy of political neutrality (paras 12-14, 99).
3. Under EU trade mark law, proprietors of reputed marks may prohibit unauthorised uses that take unfair advantage of, or harm, their marks' reputation or distinctive character, unless there is 'due cause' (Article 9(2)(c) of EU Trade Mark Regulation and

Articles 10(2)(c) and10(6) of EU Trade Mark Directive). The Belgian court asked whether freedom of expression, particularly political parody, could constitute such due cause and which criteria should govern the assessment (para 28).

The CJEU's Approach: A Welcome Recognition of Freedom of Expression

4. The CJEU answered the first question affirmatively (paras 64-82). On the second, it identified three groups of considerations for national courts (paras 83-93). First, national courts should take into account the user's intention to exercise freedom of expression in good faith, particularly where the use conveys a message about the mark or its proprietor, contributes to public debate, or draws on the mark's linguistic or cultural significance. Second, courts should consider the nature of the expression, particularly whether it contributes to a debate of public interest and takes place in a strictly commercial context. Third, national courts have to assess the consequences of the use for the proprietor and its exclusive rights, considering the intensity, extent and manner of use, the mark's reputation, the similarity of the signs and any impression that the proprietor endorses the political message, particularly where this conflicts with its values or political neutrality. The final assessment remains for the Belgian court.

5. The judgment deserves praise in several respects. First, the CJEU recognises, for the first time in EU trade mark law, that freedom of expression, including political parody, may justify the unauthorised use of a reputed trade mark. This recognition is important because trade mark protection should not give proprietors unrestricted control over the use of their marks in public discourse, including political debate, criticism and artistic expression. National courts across the EU are regularly confronted with such uses and have reached divergent outcomes, creating legal uncertainty for speakers and potentially chilling legitimate expression.[2] By recognising freedom of expression as a possible justification for otherwise infringing uses, the CJEU takes an important step towards developing a framework for reconciling trade mark rights with freedom of expression that is not only more consistent across the EU, but also more protective of freedom of expression and better aligned with the requirements of EU fundamental rights law. Whether the framework ultimately delivers on these promises, however, remains to be seen. Second, the due-cause criteria advanced by the CJEU inIKEA reflect important principles of Article 10ECHR jurisprudence, particularly the strong protection afforded to political expression and contributions to public debate, and the recognition that commercial considerations do not necessarily diminish that protection. The Court's willingness to incorporate these principles into the interpretation of EU trade mark law is therefore a welcome step towards aligning trade mark protection with the requirements of Article 10 ECHR. Third, and perhaps most innovatively, the Court acknowledges that trade marks may acquire cultural meanings beyond their commercial

function and that expressive uses need not criticize or otherwise concern the proprietor itself (para 86). Political parody may borrow a famous mark's recognisable features to communicate a message entirely unrelated to the company. This recognition goes beyond the established ECtHR jurisprudence, which has largely concerned criticism directed at corporations themselves and offers limited guidance on the use of their signs to communicate unrelated messages.

Problems with the Court's Freedom-of-Expression Analysis

6. Yet a closer examination of the judgment reveals considerable tensions between these welcome developments and the Court's actual approach to protecting freedom of expression.

7. The Court considers contribution to public debate both under the user's intentions and under the nature of the expression (paras 86-87), without explaining the distinction or the relative weight of these considerations. Its reliance on subjective intentions and the undefined notion of 'good faith' also raises questions. Should political expression receive less protection because of questionable motives? And could intentionally benefiting from a mark's reputation be considered bad faith, even when recognisability is essential to the parody? Arguably, the protection afforded to expression should depend primarily on its objective nature and contribution to public debate, rather than on the speaker's subjective motivations.[3] Similarly, the deliberate use of a mark's recognisability should not, in itself, count against the speaker, as that recognisability may be precisely what makes the expression possible or effective.[4] A more appropriate approach to assessing due cause would therefore give greater weight to the expressive nature and public-interest character of the use, while taking account of any concrete harm to the proprietor's legitimate interests.

8. More fundamentally, reputation, similarity and the advantage obtained from using a famous mark already feature in establishing prima facie trade mark infringement (paras 56-59). Yet they reappear in the assessment of due cause, which is meant to justify an otherwise infringing use. This risks circular reasoning (hardly unfamiliar in the CJEU's trade mark case law[5]): parody often depends precisely on the fame and recognisability of the borrowed symbol. If those characteristics help establish infringement and then count against its justification, how can such parody ever qualify as due cause?

9. The treatment of reputation is particularly puzzling from a freedom-of-expression perspective. The ECtHR has recognised that large public companies are subject to wider limits of acceptable criticism (Ärztekammer für Wien and Dorner v Austria, para 65[6]) and that corporate commercial reputation, unlike individual reputation, lacks a human dignity dimension (Uj v Hungary, para 22[7]), a distinction relevant to the weight accorded to reputational interests when restricting expression. Although this

jurisprudence largely concerns criticism directed at companies, corporate symbols may also acquire broader cultural and social meanings, making them valuable means of public communication, as illustrated by the DutchPlesner v Louis Vuitton judgment.[8] The more recognisable a mark becomes, the greater its potential expressive value. Yet the CJEU considers the scale of a mark's reputation primarily in relation to the consequences of its use for the proprietor andits exclusive rights (para 92), without examining whether that same reputation might strengthen the user's expressive interests. The very prominence that makes a mark valuable for political expression thus risks becoming a reason for restricting that expression.

Applying the Criteria to the IKEA-Plan: A Selective Approach?

10. The Court's observations on Vlaams Belang's campaign further aggravate these difficulties. Although the Court acknowledges that the campaign concerns a debate of public interest and may constitute political parody, it nevertheless emphasises that the use neither concerns IKEA nor its goods or services (paras 95-96), suggesting that the campaign merely rides on the coat-tails of IKEA's reputation (para 96). This is difficult to reconcile with the CJEU's own earlier recognition in this same judgment that parody need not concern the trade mark proprietor (para 86). The Court thus appears to turn the very feature it had previously recognised as legitimate - the use of a trade mark to communicate a message unrelated to its proprietor - into a reason for denying due cause.

11. Equally puzzling is the Court's suggestion that IKEA has not become a cultural reference or part of everyday language (para 94). IKEA's assembly instructions are instantly recognisable, even without the company's name or logo. Their distinctive visual language has come to represent the idea that seemingly complicated tasks can be accomplished through a few simple steps. This is precisely the association on which Vlaams Belang's campaign relied: presenting complex immigration-policy proposals as straightforward solutions that the government merely needed to assemble. The fact that IKEA's visual style could communicate this message in an entirely different context, unrelated to furniture or the company itself, arguably demonstrates the very cultural significance the Court questions.

12. Interestingly, while the Court does not hesitate to question IKEA's cultural significance, it offers no comparable assessment of whether Vlaams Belang's campaign took place in a strictly commercial context, despite expressly identifying this as a relevant criterion (para 87). This criterion is relevant to freedom-of-expression-grounded due cause because the nature of the expression influences the weight accorded to freedom of expression when determining whether an otherwise infringing use of a trade mark can be justified. And the ECtHR's jurisprudence provides considerable guidance on this point. It distinguishes purely commercial expression from participation in debates

of general interest (Hertel v Switzerland, para 47[9]) and has expressly classified electoral campaigning by a political party as a highly-protected political expression rather than as a low-protected commercial speech (Nationaldemokratische Partei Deutschlands (NPD) v Germany, para 27[10]). Against this background, Vlaams Belang's campaign can hardly be regarded as strictly commercial expression. Any indirect economic benefits, including potential political funding, would not alter its essentially political character. The CJEU's silence on this criterion when assessing due cause in the IKEA-Plan campaign is particularly striking, given its willingness to express scepticism about other aspects of the campaign.

13. The CJEU also raises the possibility that the campaign implies IKEA's political endorsement (para 99). Preventing false endorsement is certainly a legitimate concern. But would an ordinary observer not be more likely to recognise IKEA's visual style being borrowed to present political proposals as easy-to-implement solutions? The Court offers little explanation for why endorsement should be a plausible interpretation. Association, however unwelcome to the proprietor, is not necessarily endorsement.

Conclusion

14.IKEA v Vlaams Belang therefore leaves a mixed legacy. It opens EU trade mark law to freedom of expression, draws on important principles of Article 10 ECHR jurisprudence and, most innovatively, recognises that famous trade marks may serve as cultural symbols through which entirely unrelated messages can be communicated. Yet the Court develops a due-cause test marked by circular reasoning, questionable criteria and considerable inconsistencies between its general principles and their application to the dispute. Its approach remains strongly influenced by the economic logic of trade mark protection, without sufficiently translating Article 10's standards into meaningful safeguards for political expression. The troubling possibility is that political expression in the EU will now receive only as much protection as the economic logic of EU trade mark law is prepared to accommodate (and there is little reason to expect much generosity).

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[1] CJEU 8 September 2026, Case C-298/23, ECLI:EU:C:2026:721, (Inter IKEA Systems BV/Algemeen Vlaams Belang VZW).

[2] W. Sakulin,Trademark Protection and Freedom of Expression: An Inquiry into the Conflict between Trademark Rights and Freedom of Expression under European Law (Kluwer Law International 2011); Á. Fernández de la Mora Hernández,The Right to Speak a Brand: Rethinking the Interaction Between Trade Marks and Freedom of Expression in the Age of Expressive Branding (2019) (D.Phil. thesis, University of Oxford); M.

Senftleben, ‘Robustness Check: Evaluating and Strengthening Artistic Use Defences in EU Trademark Law’, (2022) 53 IIC pp. 567-603.
[3] ECtHR (GC) 15 October 2015, application no. 27510/08, ECLI:CE:ECHR:2015:1015JUD002751008, (Perinçek/Switzerland), paras 229-241; ECtHR 6 April 2021, application no. 10783/14,ECLI:CE:ECHR:2021:0406JUD001078314(Handzhiyski/Bulgaria), paras 50-51.
[4] E. Izyumenko, ‘Trademark Law and Political Expression: The Case of IKEA v. Vlaams Belang and Beyond’, (2026) 57 IIC pp. 807-849, at p. 836.
[5] M. Senftleben, ‘Epressive genericity revisited: What EU policymakers can learn from Rochelle Dreyfuss’, in S. Frankel, M. Chon, G. B. Dinwoodie, J. Schovsbo, & B. Lauriat (Eds.),Improving Intellectual Property: A Global Project, Edward Elgar Publishing 2023, pp. 246-257, https://doi.org/10.4337/9781035310869.00039.
[6] ECtHR 16 February 2016, application no. 8895/10, ECLI:CE:ECHR:2016:0216JUD000889510, (Ärztekammer für Wien and Dorner/Austria), para 65.
[7] ECtHR 19 October 2011, application no. 23954/10, ECLI:CE:ECHR:2011:0719JUD002395410 (Uj/Hungary), para 22.
[8] Court of The Hague 4 May 2011,ECLI:NL:RBSGR:2011:BQ3525 (Plesner/Louis Vuitton).
[9] ECtHR 25 August 1998, application no. 25181/94,ECLI:CE:ECHR:1998:0825JUD002518194 (Hertel/ Switzerland), para 47.
[10] ECtHR 21 November 2017, application no. 37054/17, ECLI:CE:ECHR:2017:1121DEC003705417, (Nationaldemokratische Partei Deutschlands (NDP)/Germany), para 27.