

Newsletter

IP / Media

3rd QUARTER - 2026

A social media post can be protected by copyright

On 3 September 2026, the Court of Justice of the European Union confirmed that even a short text posted on a social media platform may qualify for copyright protection where it reflects the author's personality. The Court also clarified that media outlets cannot automatically reproduce such content in full, as the news reporting exception may be limited to short extracts only.

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NEWS INTELLECTUAL PROPERTY

European Union trademark: the General Court confirms the refusal to register the OPENAI mark, held to be descriptive

General Court of the European Union, 15 July 2026, Case T-555/25, OpenAI, Inc. v EUIPO (OPENAI)

The General Court of the European Union confirms the refusal to register the European Union word mark OPENAI, filed in 2023 by the American company OpenAI, Inc. for goods and services in Classes 9, 38, 42 and 45. The EUIPO had rejected the application for most of the goods and services designated, on the ground that the sign was descriptive and devoid of distinctive character (Article 7(1)(b) and (c) of Regulation (EU) 2017/1001). The Board of Appeal having confirmed this refusal, OpenAI brought the case before the General Court, which examined as a priority the ground based on Article 7(1)(c).

The relevant public is the English-speaking public of the Union, made up of both the general public and professionals, whose level of attention varies from average to high. Relying on dictionary definitions, the General Court noted that the term “open” can be understood as meaning in particular “accessible to all” or “unrestricted”, and that “AI” is the abbreviation of “artificial intelligence”. The combination “open AI” can thus designate an artificial intelligence that is accessible or unrestricted, or alternatively transparent or explainable. The General Court recalled that a sign must be refused registration where it designates, in at least one of its potential meanings, a characteristic of the goods or services concerned.

The argument that OPENAI is a neologism was rejected: the two terms are easily recognisable, the expression complies with the grammatical rules of English and does not create an impression sufficiently far removed from the mere juxtaposition of its elements. Finally, the General Court confirmed the link between the sign and all the goods and services covered by the refusal, which all share the common characteristic of being capable of relying on a freely accessible artificial intelligence or of being driven by such an intelligence. As the descriptive character was established, there was no need to examine the lack of distinctive character, and the action was dismissed.

- This decision is in line with the case-law on descriptive signs. It does not rule on any distinctive character acquired through use, which was not examined.



NEWS INTELLECTUAL PROPERTY

Designs: the addition of a heel strap does not confer individual character on the Crocs clog design

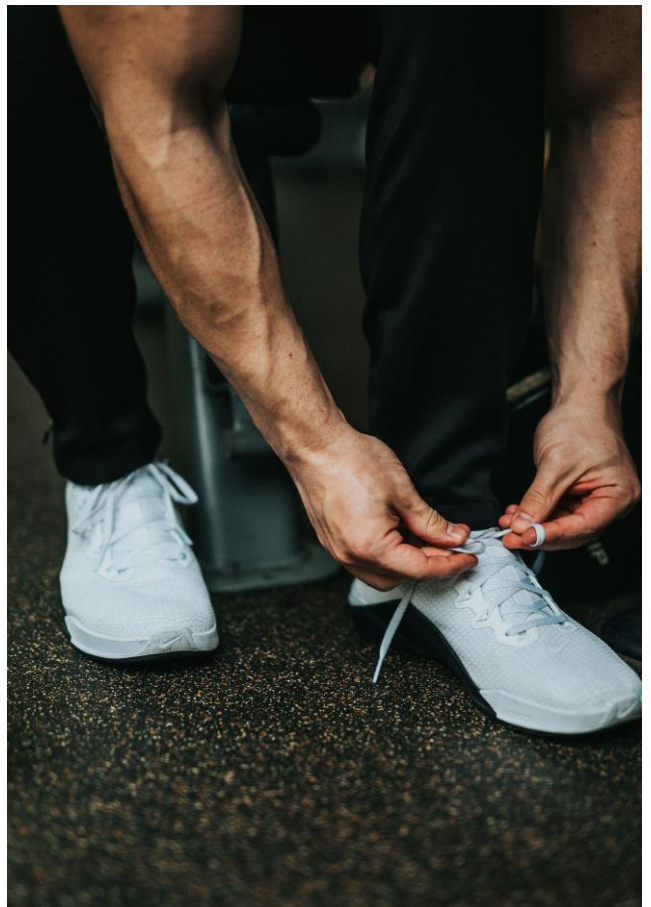
General Court of the European Union, 22 April 2026, Case T-228/25, Crocs Inc. v EUIPO

By a judgment of 22 April 2026, the General Court of the European Union confirms the invalidation, for lack of individual character, of Crocs' European Union design, filed on 22 November 2004. An application having been filed on 24 October 2022 by the company Gor Factory, which relied on a prior disclosure by "Holey Soles" clogs established by means of 2003 screenshots from the Wayback Machine, the EUIPO's Cancellation Division had declared the design invalid, a decision confirmed by the Board of Appeal.

Crocs argued that the addition of a heel strap constituted an important difference from the earlier de-sign. The General Court approved the EUIPO, which had found that the two designs present the same shape, a thick sole, a rounded toe, as well as the same arrangement of circular holes and trapezoidal cut-outs and differ only by the strap. It held that the strap, an only occasional feature of a clog, is a minor element with regard to the identical overall shape of the designs: the informed user may see in it a minor variation of the same clog. The fact that the strap serves to prevent the feet from slipping and can be handled when putting on or taking off the clog is not enough for it to prevail over that overall shape.

The General Court also held that the designer's degree of freedom in designing clogs is high, the fact that the round shape, open back and relatively flat sole have become common having no bearing on the freedom the designer enjoys as regards, in particular, materials, colours, patterns and holes. It recalled that this degree of freedom qualifies the assessment of individual character but is not an autonomous factor capable, on its own, of establishing it.

- This decision is a reminder that, in sectors where shapes are largely standardised, a variation affecting a secondary element is not enough to create a different overall impression. It also illustrates that the validity of a design registered in 2004 could be challenged, eighteen years after its filing, on the basis of internet archives: the age of a registration does not guarantee the strength of the title.



NEWS INTELLECTUAL PROPERTY

Mark with a reputation: a political party's freedom of expression may constitute due cause, subject to a balancing exercise (the "IKEA-Plan" case)

Court of Justice of the European Union (Grand Chamber), 8 September 2026, Case C-298/23, Inter IKEA Systems BV v Algemeen Vlaams Belang VZW and Others

On 14 November 2022, the Belgian political party Vlaams Belang presented a plan entitled "IKEA-PLAN – Immigratie Kan Echt Anders" ("IKEA Plan – immigration really can be done differently"), relating to asylum and immigration policy. The fifteen proposals were accompanied by illustrations including signs corresponding to the IKEA marks and characters resembling those in the company's assembly instructions. Inter IKEA brought an infringement action before the Dutch-language Enterprise Court of Brussels, which referred questions to the Court of Justice on the notion of "due cause" within the meaning of Article 9(2)(c) of Regulation (EU) 2017/1001 and Article 10(2)(c) and (6) of Directive (EU) 2015/2436.

The Court holds that, where a third party uses a sign identical or similar to a mark with a reputation, its freedom of expression, including the freedom to express political opinions and political parody, may constitute due cause provided that it prevails, after a balancing exercise, over the exclusive right of the proprietor of the mark. The mere invocation of freedom of expression is not sufficient: the third party must set out the specific reasons for that use and demonstrate that they prevail over the rights and interests of the proprietor, neither of these two rights being absolute.



The national court must take account of all the circumstances, in particular: the intention of the third party, the use having to stem from the good-faith exercise of its freedom of expression (an idea or opinion related to the mark or its proprietor, contribution to a debate of general interest, need to use the sign in the given context); the contribution of the expression to a debate of general interest and whether or not it takes place in a strictly commercial context; the consequences of the use for the proprietor of the mark or the substance of its exclusive right, taking into account the intensity, extent and manner of the use, the strength of the mark's reputation, the degree of similarity of the signs and, where appropriate, the risk that the use gives the impression that the proprietor endorses the political message, whereas its values are based on neutrality towards any political party. It is for the referring court to carry out that assessment.

- The judgment confirms that trademark law does not give proprietors of marks with a reputation absolute protection against political expression, while allowing them to oppose the use of their mark where the third party does not demonstrate that its freedom of expression prevails.

NEWS MEDIA, ENTERTAINMENT AND ADVERTISING



Copyright: a short text published on a social network may be a protected work, and the news reporting exception may be limited to short extracts

Court of Justice of the European Union (Second Chamber), 3 September 2026, Case C-598/24, CY v Gândul Media Network SRL and HO

In a judgment of 3 September 2026, the Court of Justice of the European Union clarifies the conditions under which a short text published on a social network may be protected by copyright, as well as the scope of the exception allowing the use of works in connection with the reporting of current events (Article 5(3)(c) of Directive 2001/29/EC).

On 8 September 2021, a Romanian teacher had published on her Facebook page a 22-line text entitled “A short guide for parents for the start of the school year”, in which she stated in substance that she did not wish to receive gifts from the parents of her pupils. On 14 September 2021, the website of the online newspaper Gândul reproduced the entire text in an article, without her prior authorisation; her name and the source, in the form of a hyperlink to the Facebook page, were added only later. The courts of first instance and appeal having dismissed her claims, the teacher applied to the Romanian supreme court, which referred questions to the Court.

On the notion of work, the Court holds that a text published on a social network and expressing an opinion on social practices considered inappropriate falls within the notion of “work” within the meaning of Article 2(a) of the Directive, provided that it is the expression of an intellectual creation reflecting the personality of its author. The short length of the text and its publication on a social network are not enough to rule out protection; what matters is the existence of free and creative choices in the wording of the text. It is for the national court to verify that originality in concrete terms.

On the news reporting exception, the Court considers that it is not excluded that the reproduction of the text by an online media outlet may form part of the reporting of a current event, the subject being capable of being of informational interest to the public, without a public debate necessarily having to be organised. It holds that EU law does not preclude national legislation limiting this exception to the reproduction of short extracts from a protected work, a concrete assessment remaining necessary, full reproduction being in principle liable to harm the normal exploitation of the work and the legitimate interests of the author. By contrast, it precludes a prohibition on a media outlet deriving a commercial or economic advantage, direct or indirect, from that reproduction, such a restriction not appearing in the Directive and risking depriving the exception of its effectiveness.

- For the media, the full reproduction of a text published on a social network is therefore not without risk under copyright law, the news reporting exception being capable, depending on national law, of being limited to short extracts. It is for the referring court to rule in light of these clarifications.



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About this newsletter

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