



Press and Information

Court of First Instance of the European Communities

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Luxembourg, 19 November 2009

Judgment in Case T-234/06  
Giampietro Torresan v OHIM

## **The registration of the trade mark 'CANNABIS' for beverages potentially containing hemp is not permitted**

*The trade mark is purely descriptive of the fact that the average consumer who is reasonably circumspect may think that it constitutes a description of the characteristics of the product*

In 2003, Mr Giampietro Torresan obtained from OHIM, the Community Trade Marks Office, the registration as a Community trade mark of the word sign CANNABIS in respect of beers, wine and spirits. Following an application filed by Klosterbrauerei Weissenohe GmbH & Co. KG, established in Germany, the mark was declared invalid by OHIM, which found that it was descriptive. It found that the word 'cannabis' designated, in everyday language, a textile plant or a narcotic substance and that it was, for the average consumer, a clear and direct indication of the characteristics of the goods for which it had been registered.

Mr Torresan disputes that decision and maintains that the trade mark CANNABIS has distinctive character, given that it is both a common name and a purely fanciful mark and has no connection, even indirect, with beer and beverages in general. As a common name, the word 'cannabis' constitutes the scientific name of a flowering plant from which certain drugs are extracted and from which certain therapeutic substances may be obtained. The sign CANNABIS has been present on the Italian market as a trade mark since 1996. It has, since 1999, acquired a high degree of renown as a Community trade mark for beers, wine and spirits. In any event, the word 'cannabis' does not constitute the normal way of designating beers or alcoholic beverages.

The Court points out, first, that the word 'cannabis', also referred to as 'hemp', has three possible meanings, namely:

- a textile plant the common organisation of the market in which is regulated within the Community framework and the production of which is subject to very strict legislation as regards the content of its active ingredient (tetrahydrocannabinol: THC),
- a narcotic which is prohibited by a great number of Member States,
- a substance the therapeutic use of which is under discussion.

The Court also points out that cannabis is used in the food sector in different forms (oils, herbal teas) and in different preparations (teas, pasta, bakery and biscuits, alcoholic or non-alcoholic beverages, etc.), all of which contain a very low concentration of THC and therefore have no psychotropic effects.

The Court also states that the Regulation on the Community Trade Mark prohibits the registration of descriptive signs and indications which may, in trade, designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production and may serve, in normal usage from the point of view of the target public, to designate, either directly or by reference to one of their essential characteristics, the product. Those descriptive signs are incapable of fulfilling the indication-of-origin function which forms an integral part of the trade mark. A mark's descriptive character must be assessed in relation to the goods for which the mark was registered and in the

light of the presumed perception of an average consumer of those goods, who is reasonably well informed and reasonably observant and circumspect.

The Court therefore establishes whether the average consumer may think, merely on seeing a beverage bearing the trade mark CANNABIS, that that mark describes the characteristics of the goods in question.

First, it states that there is a material link between the sign CANNABIS and certain characteristics of the goods in question as cannabis is used in the manufacture of numerous foodstuffs, including beer and certain beverages. Secondly, the Court states that the word 'cannabis' is a Latin scientific term which is well known, is present in a number of European Community languages and has had a lot of media coverage, rendering it comprehensible to the target consumer throughout the Community. Consequently, the average consumer will perceive the trade mark CANNABIS as a description of one of the characteristics of those goods. The Court points out that that characteristic is a determining factor for the consumer when he makes his purchase because he will be attracted by the possibility of obtaining similar sensations to those he obtains from the consumption of cannabis.

On those grounds, the Court dismisses Mr Torresan's action and upholds OHIM's decision to declare the registration of the trade mark CANNABIS to be invalid in respect of beverages potentially containing hemp.

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the Court of First Instance within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the Community institutions that are contrary to Community law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the Court of First Instance. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

**NOTE:** Community trade marks are valid throughout the European Union and co-exist with national trade marks. Applications for registration of a Community trade mark are sent to OHIM. Actions against its decisions may be brought before the Court of First Instance.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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