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Court of Justice of the European Union

PRESS RELEASE No 91/10

Luxembourg, 14 September 2010

Judgment in Case C-48/09 P
Lego Juris v OHIM

The Lego brick is not registrable as a Community trade mark

It is a sign consisting exclusively of the shape of goods necessary to obtain a technical result

In accordance with the Community trade mark regulation¹, a Community trade mark may consist of any signs capable of being represented graphically, such as words, designs, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings. However, signs which consist exclusively of the shape of goods which is necessary to obtain a technical result are not to be registered.

On 1 April 1996 Lego, a Danish toy manufacturer, filed an application at OHIM (Office for Harmonisation in the Internal Market), the Community trade mark office, for registration as a Community trade mark of a red toy building brick. OHIM initially registered the mark at issue. However, upon application by Mega Brands, which produces toy bricks having the same shapes and dimensions as those of Lego's bricks, the Cancellation Division of OHIM declared that the mark was invalid on the ground that clearly the Lego brick's specific features were adopted to perform a utilitarian function, and not for identification purposes. The most important element of the sign composed of the Lego brick is the two rows of studs on the upper surface of that brick, which are necessary to obtain the intended technical result of the product, that is to say, the assembly of toy bricks. After the Grand Board of Appeal of OHIM upheld the declaration that the mark was invalid, Lego brought an action before the General Court against the Grand Board of Appeal's decision.

In its judgment of 12 November 2008², the General Court held, in particular, that European Union law precludes registration of any shape consisting exclusively, in its essential characteristics, of the shape of the goods which is technically causal of, and sufficient to obtain, the intended technical result, even if that result can be achieved by other shapes using the same or another technical solution. Lego then brought an appeal before the Court of Justice against that judgment.

First of all, the Court finds that the main purpose of the prohibition on registration as a trade mark of any sign consisting of the shape of goods which is necessary to obtain a technical result is to prevent trade mark law granting an undertaking a monopoly on technical solutions or functional characteristics of a product. Thus, undertakings may not use trade mark law in order to perpetuate, indefinitely, exclusive rights relating to technical solutions.

When the shape of a product merely incorporates the technical solution developed by the manufacturer of that product and patented by it, protection of that shape as a trade mark once the patent has expired would considerably reduce the opportunity for other undertakings to use that technical solution. In accordance with the law of the European Union, technical solutions are capable of protection only for a limited period, so that subsequently they may be freely used by all economic operators.

In addition, the Court finds that by restricting the prohibition on registration to signs which consist 'exclusively' of the shape of goods which is 'necessary' to obtain a technical result the legislature

¹ Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1)

² Case [T-270/06](#) *Lego Juris v OHIM – Mega Brands (Red Lego brick)*

duly took into account that any shape of goods is, to a certain extent, functional and that it would therefore be inappropriate to refuse to register a shape of goods as a trade mark solely on the ground that it has functional characteristics. By the terms 'exclusively' and 'necessary', the legislature sought to ensure that solely shapes of goods which only incorporate a technical solution, and whose registration as a trade mark would actually impede the use of that technical solution by other undertakings, are not to be registered.

As regards the fact that the ground for refusal covers any sign consisting 'exclusively' of the shape of goods which is necessary to obtain a technical result, the Court finds that that condition is fulfilled when, as in the present case, all the essential characteristics of a shape perform a technical function, the presence of one or more minor arbitrary elements with no technical function being irrelevant in that context.

As regards the condition that registration of a shape of goods as a trade mark may be refused only if the shape is 'necessary' to obtain the technical result intended, the Court finds that that condition does not mean that the shape at issue must be the only one capable of obtaining that result. In some cases, the same technical result may be achieved by various solutions. Thus, there may be alternative shapes, with other dimensions or another design, capable of achieving the same technical result. However, that fact does not in itself mean that registering the shape at issue as a trade mark would have no effect on the availability, to other economic operators, of the technical solution which it incorporates.

The Court also finds that the position of an undertaking which has developed a technical solution cannot be protected – with regard to competitors placing on the market slavish copies of the product shape incorporating exactly the same solution – by conferring a monopoly on that undertaking through registering as a trade mark the three-dimensional sign consisting of that shape, but can, where appropriate, be examined in the light of the rules on unfair competition. Such an examination was, however, outside the scope of these proceedings.

Consequently, **the Court dismisses Lego's appeal.**

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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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