



Press and Information

General Court of the European Union

PRESS RELEASE No 124/10

Luxembourg, 17 December 2010

Judgments in Cases T-336/08, T-337/08, T-346/08 and T-395/08
Chocoladefabriken Lindt & Sprüngli AG v OHIM
and in Case T-13/09 August Storck KG v OHIM

The shape of a chocolate rabbit or reindeer with a red ribbon cannot be registered as a Community trade mark

Those shapes and those of a small bell with a red ribbon, a chocolate rabbit and a chocolate mouse are devoid of any distinctive character

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 and their packaging. However, a mark which is devoid of any distinctive character cannot, in principle, be registered.

Between February 2004 and November 2005, Chocoladefabriken Lindt & Sprüngli AG filed before OHIM (Office for Harmonisation in the Internal Market) four applications to register as Community trade marks the following three-dimensional signs:

- the shape of a chocolate rabbit with a red ribbon, in the colours red, gold and brown (T-336/08);
- the shape of a chocolate reindeer with a red ribbon, in the colours red, gold and brown (T-337/08);
- the shape of a small bell with a red ribbon, in the colours red and gold (T-346/08), and
- the shape of a chocolate rabbit in the colour gold (T-395/08).

On 10 June 2005, August Storck AG filed an application for registration of a three-dimensional Community trade mark representing a simple basic geometric shape of a rectangular block the upper side of which shows a relief in the shape of a mouse, in brown chocolate (T-13/09).

OHIM dismissed those applications for registration in particular on the ground that the marks were devoid of any distinctive character. Lindt & Sprüngli and Storck brought actions against the decisions of OHIM before the General Court.

The General Court notes, first of all, that the distinctive character of a mark means that that mark allows the goods for which registration is sought to be identified as originating from a particular undertaking and therefore to distinguish those goods from those of other undertakings. The General Court states next that the criteria for assessment of the distinctive character of three-dimensional trade marks consisting of the appearance of the goods themselves are not different from those applicable to other categories of trade mark.

However, in the present cases, the marks applied for cannot be considered to be capable of identifying the commercial origin of the goods that they designate. The lack of distinctive character results in particular from the fact that the consumer will not be able to ascertain the commercial origin of the goods designated on the basis of the various elements making up the marks applied

¹ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

for, namely the shape, the gold wrapping or the red ribbon – for the marks applied for by Lindt & Sprüngli – and the shape and colour of the mark applied for by Storck.

With regard to the marks applied for by Lindt & Sprüngli, the General Court observes first of all that, concerning their shape, a rabbit, a reindeer and a small bell are typical shapes in which chocolate and chocolate goods are presented at certain times of the year, in particular at Easter and Christmas. The General Court notes next that, in the sector of packaging of chocolate and chocolate goods, other undertakings wrap those goods in gold foil. Finally, with regard to the red ribbon with a small bell, the General Court states that it is common to decorate chocolate animals or their wrapping with knots, red ribbons and small bells. As mere decoration, the red ribbon with a small bell therefore has no distinctive character.

With regard to the mark applied for by Storck, the General Court considers that it is made up of a combination of standard presentation elements, typical of the goods concerned. It seems to be a variation of the basic shapes commonly used in the confectionery sector and does not significantly differ from the norm or the conventions of that sector. Therefore, it does not allow Storck's confectionery to be distinguished from that with a different commercial origin.

Consequently, the General Court dismisses the actions brought by Lindt & Sprüngli and Storck and upholds OHIM'S decisions not to register the marks applied for.

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

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union 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 General Court. 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 General Court.

Unofficial document for media use, not binding on the General Court.

The full text of the judgments in Cases [T-336/08](#), [T-337/08](#), [T-346/08](#), [T-395/08](#) and [T-13/09](#) is published on the CURIA website on the day of delivery

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106