



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 19/11

Luxembourg, 10 March 2001

Judgment in Case C-51/10 P

Agencja Wydawnicza Technopol sp. z o.o. v OHIM

A sign composed exclusively of numerals may be registered as a Community trade mark

However, since it is a descriptive indication of the content of the publications covered by Technopol's application for registration, the sign '1000' is devoid of any distinctive character

According to the Regulation on the Community trade mark ¹, a Community trade mark may consist of any signs capable of being represented graphically, including numerals, provided that those signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings. Consequently, among the marks which must not be registered are those which consist exclusively of signs or indications which may serve to designate characteristics of the goods or services concerned, such as the kind, quality or quantity.

In 2005, Agencja Wydawnicza Technopol sp. z o.o., a Polish publisher of brochures and periodicals containing, among other things, crossword puzzles and rebus puzzles, filed an application for registration of the sign '1000' as a Community trade mark with OHIM (the Community trade marks office). OHIM refused that application. It took the view that that sign could designate the content of Technopol's publications and that, in any event, the sign was not distinctive because it would be perceived by consumers as praising the publications and not as indicating their provenance.

Technopol contested OHIM's decision before the Court of First Instance (now 'the General Court'). In its judgment delivered in November 2009 ², the General Court upheld OHIM's decision by finding that the sign '1000' alludes to a quantity and, with regard to the goods referred to in the application for registration, will immediately be perceived by the relevant public, without further thought, as a description of the characteristics of the goods in question, in particular the number of pages and works, amount of data, or the number of puzzles in a collection, or the ranking of items referred to in them. Technopol then appealed against that judgment before the Court of Justice.

The Court points out, first of all, that one of the public interests underlying the Regulation on the Community trade mark is that of ensuring that descriptive signs relating to one or more characteristics of goods or services in respect of which registration as a mark is sought may be freely used by all traders offering those goods or services.

Secondly, in order for a sign which is composed exclusively of numerals to be refused registration on the ground that it designates a quantity, it must be reasonable to believe that, in the mind of the relevant class of persons, the quantity indicated by those numerals characterises the goods or services in respect of which registration is sought.

The General Court was right to hold that where an application for registration refers, in particular, to a category of goods the content of which is easily and typically designated by the numeral indicating the number of units they contain – such as, in the present case, periodicals containing crossword puzzles – it is reasonable to believe that a sign composed of numerals will actually be

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

² Judgment of the General Court of 19 November 2009 in Case T-298/06 *Agencja Wydawnicza Technopol v OHIM* (1000).

recognised by the relevant class of persons as a description of that quantity and therefore as a characteristic of those goods.

As regards the argument put forward by Technopol that OHIM did not follow its previous practice with regard to similar applications, the Court points out that OHIM must, when examining applications for registration, take into account the decisions already taken in respect of similar applications and consider with especial care whether it should decide in the same way or not. That being so, the examination of each trade mark application must be stringent and full, in order to prevent trade marks from being improperly registered. In the present case it has become apparent that, unlike the earlier applications for registration as marks of signs composed of numerals, the present application was caught by one of the grounds for refusal set out in the Regulation on the Community trade mark.

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

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.

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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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