



Press and Information

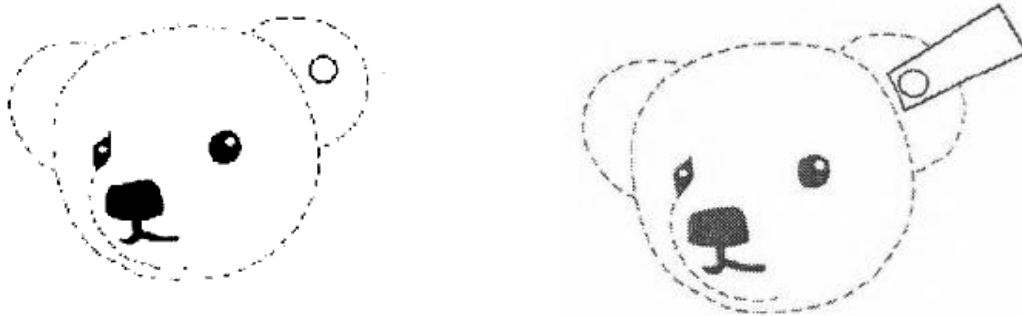
General Court of the European Union  
**PRESS RELEASE No 5/14**  
Luxembourg, 16 January 2014

Judgment in Cases T-433/12 and T-434/12  
Margarete Steiff GmbH v OHIM

**The General Court confirms that Steiff, the German soft toy manufacturer, is not entitled to a Community trade mark for the attachment of a button or a label attached by means of a button to the ear of a soft toy**

*The distinctive character of that attachment is lacking because, in itself, it does not enable the average European consumer to recognise the commercial origin of the soft toy*

In 2010, Steiff, the German soft toy manufacturer, asked the Community trade mark office (OHIM) for the registration as Community trade marks of the following 'positional' mark:



Steiff thereby requested protection – in the sense of an exclusive right – at EU level for the attachment of a metal button, shiny or mat, fixed to the middle of the ear of any soft toy with ears, and for the attachment of a fabric label in an elongated rectangular shape with such a button. The protection is not being sought for the illustrations set out above, nor for the button or the label attached by means of the button as such, but only for the position of the attachment of a button and the label by means of such a button in the middle of the ear of such soft toys.

OHIM has rejected Steiff's requests, holding that the marks applied for were devoid of distinctive character: they did not enable consumers to recognise the commercial origin of the products, that is to say that the product is a Steiff soft toy and not the soft toy of another manufacturer.

Steiff challenged OHIM's decisions before the General Court, claiming that OHIM had wrongly held that the marks applied for were devoid of distinctive character.

**By its judgments today, the General Court dismisses Steiff's actions.**

According to the General Court, the marks applied for do not have the minimum degree of distinctive character necessary to be registered as Community trade marks.

The General Court observes, first of all, that the marks applied for are indissociable from one of the possible aspects of soft toys. As 'positional marks' they are necessarily indissociable from the appearance of the soft toys, since, without the fixation of the button and the label at a precise point, they do not exist. Moreover, buttons and small labels constitute one of the normal component parts of soft toys and, second, consumers are used to a very great diversity in those products, their designs and possible configuration. Their fixation to the ear, which is a common combination, will be perceived by consumers as a decorative element, or even as a functional one (as regards the

mark applied for it also consists of the label), and cannot be regarded as exceptional. That configuration will be perceived by consumers as a variation of the possible fixation of a button or of the label and the button on other parts of the same products or even a variation of other possible decorations attached to their ears. Therefore, consumers cannot presume it to be an indication of commercial origin.

For those very reasons, the fact that Steiff may be the sole manufacturer to attach a shiny or mat round metal button to the ears of soft toys or a fabric label in the form of an elongated rectangle in the middle of the ear of soft toys by means of a button is irrelevant.

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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 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.

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*The [full text](#) of the judgment 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*