



Press and Information

Court of Justice of the European Union

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Judgment in Case C-205/13

Hauck GmbH & Co.KG v Stokke A/S, Stokke Nederland BV, Peter Opsvik
and Peter Opsvik A/S

Registration as a trade mark of shapes required by the function of a product and of shapes which give substantial value to a product with several characteristics may be precluded under EU law

Reserving the benefit of such shapes to a single operator would grant a monopoly over the essential characteristics of goods, thereby undermining the objective of trade mark protection

EU law¹ prohibits, inter alia, the registration of trade marks consisting exclusively of a shape which gives the goods substantial value or results from the nature of the goods themselves.

Peter Opsvik designed a children's chair called 'Tripp Trapp'. That chair consists of sloping uprights, to which all elements of the chair are attached, and of an L-shaped frame of uprights and gliders (sliding plates) which give it a high level of originality. In 1972, the Stokke group, which includes the Norwegian company Stokke A/S and the Netherlands company Stokke Nederland BV, put the Tripp Trapp high chair on the market. Peter Opsvik and the Norwegian company Peter Opsvik A/S also hold the intellectual property rights to the shape at issue.

In 1998, Stokke A/S filed an application with the Benelux Office for Intellectual Property for the registration of a three-dimensional trade mark resembling the 'Tripp Trapp' children's chair. The trade mark was registered in the name of Stokke A/S for 'chairs, especially high chairs for children' and concerns the shape represented below:



The German Company, Hauck GmbH & Co.KG, manufactures and distributes children's articles, including two models of chair which it has named 'Alpha' and 'Beta'.

Stokke A/S, Stokke Nederland BV, Peter Opsvik and Peter Opsvik A/S brought an action against Hauck claiming that Hauck's sale of the 'Alpha' and 'Beta' chairs infringed their copyright and the rights deriving from the registered trade mark. Hauck brought a counterclaim seeking a declaration that the trade mark was invalid. In 2000 a Dutch court upheld the action brought by Stokke and Opsvik in so far as it concerned the copyright but at the same time it upheld Hauck's counterclaim seeking a declaration that the trade mark was invalid.

¹ First Council Directive of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1). This directive was applicable at the material time.

On appeal in cassation, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) referred questions to the Court of Justice for a preliminary ruling on the grounds for refusal or invalidity of the registration of a mark consisting of the shape of a product.

In today's judgment, the Court points out first of all that the **concept of a 'shape which results from the nature of the goods themselves'** means that shapes with essential characteristics which are inherent to the generic function or functions of such goods must, in principle, also be denied registration. Reserving such characteristics to a single economic operator would make it difficult for competing undertakings to give their goods a shape which would be suited to the use for which those goods are intended. Moreover, those are essential characteristics which consumers will be looking for in the products of competitors, given that they are intended to perform an identical or similar function.

As regards the ground of refusal or invalidity on the basis of a 'shape which gives substantial value to the goods' the Court observes that this concept cannot be limited purely to the shape of products having only artistic or ornamental value, as there is otherwise a risk that products which have essential functional characteristics as well as a significant aesthetic element will not be covered. The fact that the shape of a product is regarded as giving substantial value to that product does not mean that other characteristics may not also give the product significant value. Thus, the aim of preventing the exclusive and permanent right which a trade mark confers from serving to extend indefinitely the life of other rights which the EU legislature has sought to make subject to limited periods requires that the possibility of applying that ground of refusal or invalidity not be automatically ruled out when, in addition to its aesthetic function, the product concerned also performs other essential functions. The presumed perception of the sign by the average consumer is not a decisive element when applying that ground for refusal, but may, at most, be a relevant criterion of assessment for the competent authority in identifying the essential characteristics of that sign. Other assessment criteria may also be taken into account, such as the nature of the category of goods concerned, the artistic value of the shape in question, its dissimilarity from other shapes in common use on the market concerned, a substantial price difference in relation to similar products, and the development of a promotion strategy which focuses on accentuating the aesthetic characteristics of the product in question.

Finally, as regards the question whether those two grounds for refusal of registration may be applied in combination, the Court observes that the grounds for refusal of registration provided for by the trade marks directive operate independently of one another. Thus, if any one of the criteria is satisfied, a sign consisting exclusively of the shape of the product or of a graphic representation of that shape cannot be registered as a trade mark.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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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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