

TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS  
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ  
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL  
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN  
EUROOPA ÜHENDUSTE KOHUS  
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ  
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE  
EIROPAS KOPIENU TIESA



POS BENDRIJŲ TEISINGUMO TEISMAS  
İRÓPAI KÖZÖSSÉGEK BÍRÓSÁGA  
IL-QORTI TAL-GUSTIZZJA TAL-KOMUNITAJIET EWROPEJ  
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH  
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPELAS  
SÚDNY DVOR EURÓPSKYCH SPOLOČENSTIEV  
SODIŠČE EVROPSKIH SKUPNOSTI  
EUROOPAN YHTEISÖJEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

**PRESS RELEASE No 51/06**

22 June 2006

Judgments of the Court of Justice in Cases C-24/05 P and C-25/05 P

*August Storck KG v Office for Harmonisation in the Internal Market (OHIM)*

**THE COURT DISMISSES THE APPEALS BROUGHT BY STORCK AGAINST THE  
JUDGMENTS OF THE COURT OF FIRST INSTANCE REJECTING THE  
ACTIONS BROUGHT AGAINST THE DECISIONS OF OHIM REFUSING TO  
REGISTER AS COMMUNITY TRADE MARKS TWO MARKS RELATING TO  
WERTHER'S ORIGINAL SWEETS**

*The grounds of appeal relied on by Storck in support of its appeals are partly inadmissible  
and partly unfounded*

The company August Storck requested the Court of Justice of the European Communities to set aside the judgments of the Court of First Instance of 10 November 2004<sup>1</sup> by which the latter dismissed the actions seeking annulment of two decisions of the Office for Harmonisation in the Internal Market (OHIM) refusing to register as Community trade marks two marks relating to 'Werther's Original' sweets. The first of the marks is a three-dimensional shape representing a light-brown sweet. The second is the representation in perspective of the shape of a sweet wrapper with twisted ends.

In the judgments under appeal, the Court of First Instance held that the shapes in dispute cannot be sufficiently distinguished from other shapes commonly used for sweets and will therefore not enable consumers to distinguish them from those of another commercial origin.

The Court of Justice rejects Storck's arguments that the Court of First Instance erred in law in finding that **the shape of the sweet** in question is not substantially different from certain basic shapes commonly used, in trade, for such products. In basing its decision on the finding that the mark applied for does not enable the relevant public immediately and with certainty

<sup>1</sup> Case T-396/02 and Case T-402/02 *Storck v OHIM*, not yet published in the ECR.

to distinguish the applicant's sweets from those of another commercial origin, **the Court of First Instance established to the requisite legal standard that the mark applied for does not depart significantly from the norm or customs of the confectionery sector.**

As regards **the mark consisting of the shape of a sweet wrapper with twisted ends**, the Court of Justice finds that the Court of First Instance also established to the requisite legal standard that the mark applied for does not depart significantly from the norm or customs of the confectionery sector.

The Court of Justice therefore dismisses the appeals.

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: DE, EN, FR, NL, PL, SK, SL*

*The full text of the judgment may be found on the Court's internet site  
<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-24/05>  
It can usually be consulted after midday (CET) on the day judgment is delivered.*

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