

Press and Information Division

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Judgment of the Court of Justice in Case C-191/01 P

Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm. Wrigley Jr. Company

A SIGN MAY NOT BE REGISTERED AS A COMMUNITY TRADE MARK IF ONE OF ITS POSSIBLE MEANINGS CAN DESIGNATE A CHARACTERISTIC OF THE GOODS CONCERNED

The judgment in which the Court of First Instance held that the word "Doublemint" is not exclusively descriptive and is registrable as a Community trade mark is set aside.

In March 1996, Wrigley applied to OHIM for registration of the word "Doublemint" as a Community trade mark for chewing gum. OHIM refused that application on the ground that the word "Doublemint" was descriptive of certain characteristics of the goods concerned and that it could not be registered as a trade mark under the Community rules.

Wrigley appealed against the decision to the Court of First Instance of the EC. By judgment of 31 January 2001, the Court of First Instance annulled OHIM's decision, holding that the word "Doublemint" was not "exclusively descriptive", *inter alia*, because the combination of the words "double" and "mint" could have two distinct meanings: "twice the usual amount of mint" or "flavoured with two varieties of mint". The Court of First Instance also found that the word "mint" was a generic term which included a number of different types of mint. The Court therefore held that the numerous meanings of "Doublemint" deprived the sign of any descriptive function and that the word could be registered as a Community trade mark.¹

OHIM appealed against that judgment to the Court of Justice.

The Court of Justice points out that, by prohibiting the registration as Community trade marks of

¹ See judgment in Case T-193/99 *Wrigley v OHIM* [2001] ECR II-417.

signs which may serve to designate the characteristics of the goods or services concerned, Community law is pursuing an aim which in the public interest, namely that descriptive signs or indications may be freely used by all.

A sign must be refused registration if at least one of its possible meanings designates a characteristic of the goods or services concerned.

In holding that "Doublemint" could not be characterised as exclusively descriptive and could therefore be registered as a Community trade mark, the Court of First Instance applied a test based on whether the mark was "exclusively descriptive", which is not the test laid down by the regulation on the Community trade mark. In so doing, it failed to ascertain whether "Doublemint" was capable of being used by other economic operators to designate a characteristic of their goods and services.

The Court of Justice accordingly sets aside the judgment of the Court of First Instance and refers the case back to that Court for judgment in accordance with this interpretation of Community law.

Unofficial document for media use which is not binding on the Court of First Instance.

Available languages: FR, EN, DE

The full text of the judgment can be found on the internet (www.curia.eu.int).

In principle it will be available from midday CET on the day of delivery

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