

Press and Information Division

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Judgment of the Court of First Instance in Case T-16/02

Audi AG v Office for Harmonisation in the Internal Market (OHIM)

**THE COURT OF FIRST INSTANCE DISMISSES THE ACTION BROUGHT BY
AUDI AGAINST THE DECISION OF OHIM NOT TO REGISTER THE MARK
"TDI" AS A COMMUNITY TRADE MARK**

The Court of First Instance considers that, from the point of view of the public, the word mark "TDI" designates one of the characteristics of the cars and repair services and therefore cannot be registered as a Community trade mark.

In 1996, Audi filed an application with the Office for Harmonisation in the Internal Market (OHIM) for registration of the word mark "TDI" as a Community trade mark. The abbreviation "TDI" is generally recognised as standing for "Turbo Diesel Injection" or "Turbo Direct Injection". The OHIM examiner refused the application on the ground that the word mark was devoid of any distinctive character.

Audi therefore lodged an appeal with the Board of Appeal of OHIM, which was dismissed on 8 November 2001 on the principal ground that the mark was descriptive. In May 2002, Audi brought an action before the Court of First Instance for annulment of that decision.

The Court of First Instance observed that signs and indications which may serve to designate the characteristics of goods or services are to be freely available to all and may not be registered. The Court concluded that, from the point of view of the public, there is a sufficiently direct and specific link between the word mark "TDI" and the essential characteristics of the categories of goods and services for which registration was sought.

The Court noted that combinations of letters are commonly used in the motor industry and that the form of the mark "TDI" is therefore not unusual. The fact that the word mark "TDI" may have two different meanings is, in the Court's view, irrelevant.

The Court pointed out that such a mark may, however, be registered as a Community trade mark if it has become distinctive through use in the entire Community. According to the Court, Audi had produced no evidence enabling it to find that the mark "TDI" had become distinctive in this way in the Member States other than Germany.

With respect to the new facts submitted by Audi in order to show distinctiveness, the Court stated that decisions of the Boards of Appeal of OHIM can only be annulled or altered if they are substantively unlawful or have been given in breach of a procedural requirement. The sole purpose of an action before the Court is thus to review the legality of the decision of the Board of Appeal and not to re-open the case.

The Court went on to observe that, under Regulation (EC) No 40/94, reasons must be given for the decisions adopted by OHIM. According to the Court, the Board of Appeal had a duty to explain why it could not be found, on the basis of the evidence submitted by Audi, that the mark applied for had become distinctive through use in the entire Community. However, the finding that the Board of Appeal of OHIM had failed to comply with its duty to state reasons was not sufficient to lead to annulment of its decision since the result of a new decision of OHIM would inevitably be the same as that of the first decision.

Reminder: An appeal against the decision of the CFI, limited to points of law, can be brought before the Court of Justice of the European Communities within two months of delivery.

Unofficial document, for media use only, which does not bind the Court of First Instance.

Available languages: English, French and German.

*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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