



Press and Information

General Court of the European Union
PRESS RELEASE No 105/11
Luxembourg, 6 October 2011

Judgment in Case T-508/08
Bang & Olufsen A/S v OHIM

Bang & Olufsen cannot register the shape of one of its loudspeakers as a community trade mark

Registration is not possible since the trade mark consists exclusively of the shape of the loudspeaker, which gives substantial value to the product

The Community Trade Mark Regulation¹ provides that registration of a trade mark is to be refused on certain grounds which are expressly provided for. In particular, marks which are devoid of any distinctive character² and signs which consist exclusively of the shape which gives substantial value to the goods³ are not to be registered.

In September 2003, the Danish firm Bang & Olufsen A/S applied to the Community trade mark Office (OHIM) for registration as a Community trade mark of the following three-dimensional sign:



OHIM rejected the application on the ground that the mark applied for was devoid of any distinctive character.

¹ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), as amended (replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

² Under Article 7(1)(b) of Regulation No 40/94.

³ Under Article 7(1)(e) of Regulation No 40/94.

In December 2005, Bang & Olufsen brought an action against that decision before the General Court. By its judgment of 10 October 2007⁴, the Court upheld the action, concluding that OHIM had made an error of law in holding that the mark applied for was devoid of any distinctive character.

Acting upon the Court's judgment, OHIM adopted a further decision, at the end of which it examined the application to register the sign on the basis of other absolute grounds for refusal and decided that the sign consisted exclusively of the shape which gives substantial value to the goods. Consequently, it rejected the application for registration.

Bang & Olufsen therefore brought a further action before the General Court seeking annulment of the second decision.

In its judgment today, the Court states, first, that OHIM is required to examine of its own motion the relevant facts which may lead it to apply an absolute ground for refusal. The regulation lists the various absolute grounds for refusal which may be raised against registration of a trade mark application but does not specify the order in which those grounds should be considered. Furthermore, each of the grounds for refusal to register is independent of the others and calls for separate examination. In those circumstances, there was nothing to prevent the Board of Appeal from carrying out an examination of one ground for refusal after the examination of another ground.

Second, the Court recalls that a product's shape is a sign which may constitute a trade mark. Indeed, a Community trade mark may consist of any signs capable of being represented graphically, such as words, designs, the shape of goods and their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings. However, signs which consist exclusively of the shape which gives substantial value to the goods are not to be registered.

The Court finds that in the present case the shape for which registration was sought has a very specific design. In the Court's view, that design is an essential element of Bang & Olufsen's branding and increases the value of the product concerned. Furthermore, it is apparent from extracts from distributors' websites and on-line auction or second-hand websites that the aesthetic characteristics of that shape are emphasised first and that the shape is perceived as a kind of pure, slender, timeless sculpture for music reproduction, which makes it an important selling point.

Accordingly, the Court holds that OHIM did not make any error in finding that, independently of the other characteristics of the product at issue, the shape for which registration was sought gives substantial value to that product.

Bang & Olufsen's action is therefore dismissed.

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.

Unofficial document for media use, not binding on the General Court.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

⁴ Case [T-460/05](#) *Bang & Olufsen v OHIM (Shape of a loudspeaker)*.