



Press and Information

Court of Justice of the European Union

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Judgment in Case C-98/11 P
Chocoladefabriken Lindt & Sprüngli AG v OHIM

The shape of a chocolate rabbit with a red ribbon cannot be registered as a Community trade mark

The Court of Justice confirms that this shape is devoid of any distinctive character

According to the Community Trade Mark Regulation¹ the shape of goods or their packaging can constitute a Community trade mark. However, a mark which is devoid of any distinctive character cannot, in principle, be registered.

On 18 May 2004, the company Lindt & Sprüngli AG filed an application for a Community trade mark with OHIM (Community trade mark office) for a 3D sign representing the shape of a chocolate rabbit with a red ribbon.

OHIM dismissed the application, in particular on the ground that the mark applied for was devoid of any distinctive character. Lindt challenged that decision before the General Court, which dismissed the application², concluding that OHIM had not erred in law in its decision.

Lindt brought an appeal against that judgment before the Court of Justice.

In its judgment delivered today, **the Court rules that the General Court did not err in law** by concluding that the OHIM's refusal to register the mark was valid.

The Court recalls that the distinctiveness of the mark must be assessed, first, by reference to the goods or services for which registration is sought and, secondly, by reference to the perception of the relevant public. In that regard, the Court rules that the General Court correctly identified and applied those criteria by carrying out an evaluation both of current practices in the industry and the perception of the average consumer. As regards the acquisition of distinctive character through use of the mark applied for, the Court confirms the reasoning of the General Court which found that Lindt had not proved that distinctive character had been acquired through use across the EU.

Consequently, **the Court dismisses the appeal.**

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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

² Case [T-336/08](#) *Chocoladefabriken Lindt & Sprüngli v OHIM* see also Press Release No [124/10](#).