



Press and Information

Court of Justice of the European Union

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Judgment in Case C-421/13

Apple Inc. v Deutsches Patent- und Markenamt

**The representation of the layout of a retail store, such as an ‘Apple’ flagship store, may, subject to certain conditions, be registered as a trade mark**

*Such a representation must be capable of distinguishing the goods or services of one undertaking from those of other undertakings*

In 2010, Apple registered with the United States Patent and Trademark Office a three-dimensional trade mark consisting of the representation, by a multicoloured design, of its flagship stores. That trade mark was registered for ‘retail store services featuring computers, computer software, computer peripherals, mobile phones, consumer electronics and related accessories and demonstrations of products relating thereto’.

That representation took the following form:



Apple subsequently sought to extend that trade mark internationally. In 2013, its extension to German territory was refused by the Deutsches Patent- und Markenamt (German Patent and Trade Mark Office) on the ground that the depiction of the space devoted to the sale of the undertaking’s goods was nothing other than the representation of an essential aspect of that undertaking’s business and that consumers would not see it as an indication of the commercial origin of the goods.

Apple brought an appeal against that decision before the Bundespatentgericht (Federal Patents Court, Germany). The latter asks the Court of Justice, inter alia, whether the representation of the layout of a retail store, by a design alone, without any indication of size or proportions, may be registered as a trade mark for services aimed at inducing the consumer to purchase the goods of the applicant for registration and, if so, whether such a ‘presentation of the establishment in which a service is provided’ may be treated in the same way as ‘packaging.’

In today’s judgment, the Court notes first of all that, in order to be capable of constituting a trade mark, the subject-matter of the application for registration must, in accordance with the trade marks directive,<sup>1</sup> satisfy three conditions, namely, that it must (1) constitute a sign, (2) be capable of graphic representation and (3) be capable of distinguishing the ‘goods’ or ‘services’ of one undertaking from those of other undertakings.

<sup>1</sup> Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008 L 299, p. 25).

The Court takes the view in this respect that **a representation that, such as the one in the present case, depicts the layout of a retail store** by means of an integral collection of lines, curves and shapes, **may constitute a trade mark** provided that it is capable of distinguishing the goods or services of one undertaking from those of other undertakings. Furthermore, it cannot be ruled out, according to the Court, that the layout of a retail outlet depicted by such a sign may allow the goods or services for which registration is sought to be identified as originating from a particular undertaking. That could be the case where the depicted layout departs significantly from the norm or customs of the economic sector concerned.

The Court emphasises, however, that the fact that a sign is generally capable of constituting a trade mark does not imply that the sign necessarily possesses **a distinctive character** within the meaning of the directive. This character **must be assessed** in practice **by reference to**, first, **the goods or services in question and**, second, **the perception of the relevant public** (the public consisting of the average consumer of the category of goods or services in question, who is reasonably well informed and reasonably observant and circumspect). It is also by a case-by-case assessment that **the competent authority must determine whether the sign is descriptive** of the characteristics of the goods or services concerned, or whether it gives rise to one of the other grounds for refusing the registration laid down in the directive.

The Court holds that, as regards a design representing the layout of a retail store, the assessment criteria that the competent authority must apply do not differ from those used for other types of sign.

Finally, as regards the question of whether services aimed at inducing the consumer to purchase the goods of the applicant for registration can constitute 'services' for which a sign, such as the one in the present case, may be registered as a trade mark, the Court takes the view that, **if none of the grounds for refusing registration** laid down by the directive **precludes it, a sign representing the layout of the flagship stores of a manufacturer of goods may lawfully be registered** not only for those goods but also **for services, so long as they do not form an integral part of the offer for sale of those goods**. Services which, like those mentioned in Apple's application, consist, for example, of carrying out, in such stores, demonstrations of the products by means of seminars may in themselves constitute remunerated services falling within the concept of 'service'.

From this the Court concludes that the representation of the layout of a retail store, by a design alone, without indicating the size or the proportions, may be registered as a trade mark for services, which, although relating to goods, do not form an integral part of their offer for sale, on condition that that representation is capable of distinguishing the services of the applicant for registration from those of other undertakings and that no ground for refusal precludes it.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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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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