



Press and Information

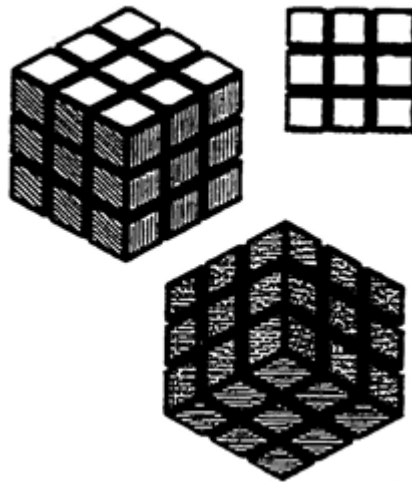
General Court of the European Union
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Judgment in Case T-450/09
Simba Toys GmbH & Co. KG v OHIM

Registration of the shape of the Rubik's Cube as a Community trade mark is valid

The graphic representation of that cube does not involve a technical solution which would prevent it from being protected as a mark

At the request of Seven Towns, a UK company which manages inter alia intellectual property rights relating to the 'Rubik's Cube', the EU's Trademark Office (OHIM) registered, in 1999, the shape of that cube in respect of 'three-dimensional puzzles' as a three-dimensional Community trade mark.



In 2006, Simba Toys, a German toy manufacturer, applied to OHIM to have the three-dimensional mark cancelled on the ground inter alia that it involves a technical solution consisting of its rotating capability, since such a solution may be protected only by patent and not as a mark. OHIM dismissed its application and Simba Toys therefore brought an action before the General Court for annulment of OHIM's decision.¹

In today's judgment, **the General Court dismisses the action brought by Simba Toys.**

In the first place, the Court finds that the essential characteristics of the contested mark are, first, the cube per se and, second, the grid structure which appears on each of its surfaces. According to the Court, the bold black lines which form part of that structure and which appear on the three representations of the cube by criss-crossing the inside of those representations are not suggestive of any rotating capability of the individual elements of the cube and therefore **do not fulfil any technical function.**

The rotating capability of the vertical and horizontal lattices of the Rubik's Cube does not result either from the black lines or the grid structure, but from an internal mechanism of the cube which is invisible on its graphic representations. Consequently, **the registration of the shape of the**

¹ Pending delivery of the judgment of the Court of Justice in Case [C-48/09 P](#) *Lego Juris v OHIM*, the procedure in the present case was suspended.

Rubik's cube as a Community trade mark cannot be refused on the ground that that shape incorporates a technical function.

In the second place, the Court finds that the mark in question does not allow its proprietor to prohibit third parties from marketing all types of three-dimensional puzzles that have a rotating capability. The Court states that **the proprietor's marketing monopoly is limited to three-dimensional puzzles that have the shape of a cube the surfaces of which bear a grid structure.**

In the third place, the Court finds that the cubic grid structure of the mark in question differs considerably from the representations of other three-dimensional puzzles available on the market. That structure therefore has distinctive character which enables consumers to identify the producer of the goods in respect of which the mark is registered.

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.

NOTE: Community trade marks are valid throughout the European Union and co-exist with national trade marks. Applications for registration of a Community trade mark are sent to OHIM. Actions against its decisions may be brought before the General Court.

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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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