



Press and Information

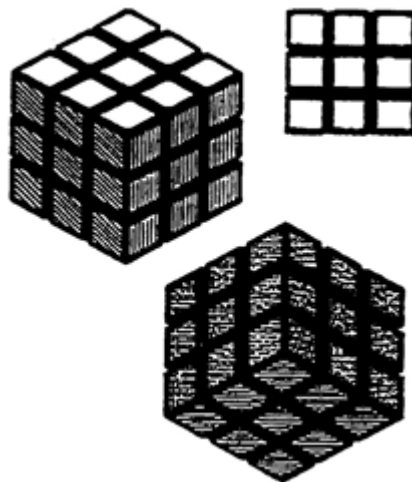
Court of Justice of the European Union
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Judgment in Case C-30/15 P
Simba Toys GmbH & Co. KG v EUIPO

The Court sets aside the judgment of the General Court and annuls the EUIPO decision which confirmed registration of the shape of the Rubik's Cube as an EU trade mark

In examining whether registration ought to be refused on the ground that that shape involved a technical solution, EUIPO and the General Court should also have taken into account non-visible functional elements represented by that shape, such as its rotating capability

At the request of Seven Towers, a UK company which manages, inter alia, intellectual property rights relating to the 'Rubik's Cube', the European Union Intellectual Property Office (EUIPO) registered in 1999, as a three-dimensional EU trade mark, the following cubic shape in respect of 'three-dimensional puzzles':



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

By its judgment of 25 November 2014,¹ the General Court dismissed the action brought by Simba Toys on the ground that the cubic shape in question did not involve a technical function such as to preclude it from being protected as a trade mark. In particular, the General Court took the view that the technical solution characterising the Rubik's Cube did not result from the characteristics of that shape but, at most, from an internal and invisible mechanism of the cube.

Simba Toys appealed to the Court of Justice against the judgment of the General Court.

¹ Case: [T-450/09](#) Simba Toys GmbH & Co. KG v OHIM, see also Press Release [158/14](#).

By today's judgment, the Court points out that Regulation No 40/94 on the Community trade mark, which is applicable in the present case,² seeks to prevent trade mark law from granting an undertaking a monopoly on technical solutions or functional characteristics of a product. In that regard, the Court confirms that the essential characteristics of the shape at issue are the cubic form and a grid structure on each surface of that cube.

Next, with regard to the question as to whether registration of the shape in question as an EU trade mark is liable to confer on Seven Towns a monopoly on a technical solution, the Court stresses that it is necessary to examine whether that shape is necessary in order to obtain a technical result.

Contrary to what the General Court found, the Court of Justice notes that, in the context of the present examination, **the essential characteristics of the cubic shape in issue must be assessed in the light of the technical function of the actual goods represented.** In particular, it was for the General Court also to take into consideration non-visible elements of the graphic representation of that shape, such as the rotating capability of the individual elements in a three-dimensional 'Rubik's Cube'-type puzzle. In that context, the General Court ought to have defined the technical function of the product concerned and have taken this into account in its examination.

Moreover, the Court takes the view that the fact that Seven Towers requested registration of the contested sign for 'three-dimensional puzzles' in general, without restricting itself to those that have a rotating capability, cannot preclude account from being taken of the technical function of the actual goods represented by the cubic form in question, and makes it even necessary, since the decision on that request is liable to affect all manufacturers of three-dimensional puzzles with cube-shaped elements.

In those circumstances, the Court **sets aside the judgment of the General Court and annuls the EUIPO decision which confirmed registration of the shape in question as an EU trade mark.**

It will be a matter for EUIPO to adopt a new decision taking into account the findings set out by the Court in the present judgment.

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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² Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).