

Case T-393/02

Henkel KGaA

v

**Office for Harmonisation in the Internal Market
(Trade Marks and Designs) (OHIM)**

(Community trade mark — Three-dimensional mark — Shape of a white and transparent bottle — Absolute ground for refusal — Distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Fourth Chamber), 24 November 2004 II - 4117

Summary of the Judgment

*Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character — Three-dimensional mark — Shape of a white and transparent bottle
(Council Regulation No 40/94, Art. 7(1)(b))*

A three-dimensional sign made up of the shape of a plastic bottle, shown standing upright on its stopper and consisting of a transparent body and a white stopper, the front and rear surfaces of the which incorporate a 'V' shape, which extends towards the front and meets the edges of the sides of the body, registration of which is sought for 'soaps; washing and bleaching agents for laundry; perfumed flushing water conditioners; chemical preparations for cleaning porcelain, stones, woods, glass, metal and plastics' and 'plastic boxes for liquid, gel and paste agents' within Classes 3 and 20 of the Nice Agreement is not devoid of any distinctive character for the purposes of Article 7(1)(b) of Regulation No 40/94 on the Community trade mark, as the combination of those elements has a truly individual

character and cannot be regarded as altogether common to all the products in question, thus conferring on the bottle a particular and unusual appearance which is likely to attract the attention of the relevant public and enable that public, once familiar with the shape of the packaging of the goods in question. That position is, moreover, supported by the registration of a three-dimensional mark having an identical shape in 11 of the 15 Member States which formed the Community at the time the application for registration was lodged.

(see paras 40, 47-48)