

Case T-140/02

Sportwetten GmbH Gera

v

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

(Community trade mark — Application for a declaration of invalidity — Figurative Community trade mark including the word element INTERTOPS — Mark contrary to public policy or to accepted principles of morality — Article 7(1)(f) and (2) and Article 51 of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Second Chamber), 13 September
2005 II - 3249

Summary of the Judgment

Community trade mark — Surrender, revocation and invalidity — Absolute grounds of invalidity — Mark contrary to public policy or to accepted principles of morality — Assessment based solely on examination of the mark itself in relation to the goods and services covered — Facts relating to the conduct of the proprietor of the trade mark — Not relevant (Council Regulation No 40/94, Art. 7(1)(f))

It is the Community trade mark itself, namely the sign in relation to the goods or services as they appear upon registration of the trade mark, which is to be assessed in order to determine whether that mark is contrary to public policy or accepted principles of morality within the meaning of Article 7(1)(f) of Regulation No 40/94, likely to lead to a declaration of invalidity pursuant to Article 51(1)(a) of that regulation. An overall reading of the various subparagraphs of Article 7(1) of Regulation No 40/94 shows that they refer to the intrinsic qualities of the mark applied for and not to circumstances relating to the conduct of the person holding the trade mark.

It follows that the fact that the proprietor of a Community trade mark is prohibited, in a Member State, from offering the services covered by the mark and from advertising them cannot in any way be considered as relating to the intrinsic qualities of that trade mark within the meaning of the above-mentioned interpretation. Consequently, that fact cannot have the effect of rendering the trade mark itself contrary to public policy or to accepted principles of morality.

(see paras 27-29)