

Case T-128/00

Procter & Gamble Company

v

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

(Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Second Chamber), 19 September
2001 II-2789

Summary of the Judgment

1. *Community trade mark — Appeals procedure — Appeals before the Community judicature — Actions for annulment of measures — Interest in bringing proceedings (Council Regulation No 40/94, Art. 63)*

2. *Community trade mark — Definition and acquisition of the Community trade mark — Signs capable of constituting a trade mark — Shape — Condition — Distinctive character*
(Council Regulation No 40/94, Arts 4 and 7(1)(b))
3. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Signs devoid of any distinctive character — Three-dimensional mark consisting of the shape and design of the product — Distinctive character — Criteria by reference to which such character assessed*
(Council Regulation No 40/94, Art. 7(1)(b))
4. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Signs devoid of any distinctive character — Features of a three-dimensional mark suggesting certain of the product's qualities without being descriptive — Effect on the assessment of distinctive character*
(Council Regulation No 40/94, Art. 7(1)(b) and (c))
5. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Signs devoid of any distinctive character — Three-dimensional mark — Square tablet with chamfered edges and bevelled corners, with speckles and a square inlay, for household goods*
(Council Regulation No 40/94, Art. 7(1)(b))

1. An action brought under Article 63 of Regulation No 40/94 on the Community trade mark is not admissible unless the applicant has an interest in seeing the contested measure annulled. Such an interest exists only if annulment of the measure is of itself capable of having legal consequences.

mark that a product's shape falls among the signs which may constitute a Community trade mark. However, the fact that a category of signs is, in general, capable of constituting a trade mark does not mean that signs belonging to that category necessarily have distinctive character for the purposes of Article 7(1)(b) of Regulation No 40/94 in relation to a specific product or service.

(see para. 12)

(see para. 47)

2. It is clear from Article 4 of Regulation No 40/94 on the Community trade
3. Article 7(1)(b) of Regulation No 40/94 on the Community trade mark does not

distinguish between different categories of trade marks. The criteria for assessing the distinctive character of three-dimensional trade marks consisting of the shape of the product itself are therefore no different from those applicable to other categories of trade marks.

Nevertheless, when those criteria are applied, account must be taken of the fact that the perception of the relevant section of the public is not necessarily the same in relation to a three-dimensional mark consisting of the shape and design of the product itself as it is in relation to a word mark, a figurative mark or a three-dimensional mark not consisting of the shape of the product. Whilst the public is used to recognising the latter marks instantly as signs identifying the product, this is not necessarily so where the sign is indistinguishable from the appearance of the product itself.

(see paras 50-51)

4. It does not follow from the fact that the features of a three-dimensional mark suggest certain of the product's quali-

ties without, however, being capable of being considered a descriptive indication in terms of Article 7(1)(c) of Regulation No 40/94 on the Community trade mark that those features necessarily confer a distinctive character on the mark. Where the target sector of the public sees the presence of those features as a suggestion that the product has certain qualities, and not as an indication of its origin, there is no distinctive character.

(see para. 58)

5. According to Article 7(1)(b) of Regulation No 40/94 on the Community trade mark, 'trade marks which are devoid of any distinctive character' are not to be registered. As regards the application for registration for household goods of a three-dimensional trade mark in the form of a square tablet with chamfered edges and bevelled corners and with speckles and a dark square depression in the centre, colour not being claimed, the tablet is devoid of any distinctive character.

Given the overall impression created by the combination of the shape and design of the tablet, the mark applied

for, which is among the obvious variations on the get-up of the product concerned, will not enable consumers, in the absence of any additional features, to distinguish the products concerned from those having a different

trade origin when they come to select a product for purchase.

(see paras 60, 63, 68)