

## Case T-129/04

**Develey Holding GmbH & Co. Beteiligungs KG**

**v**

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

(Community trade mark — Three-dimensional mark — Shape of a plastic bottle  
— Refusal of registration — Absolute ground of refusal — Lack of distinctive  
character — Earlier national trade mark — Paris Convention — TRIPs  
Agreement — Article 7(1)(b) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Second Chamber), 15 March 2006 II - 813

### 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  
(Council Regulation No 40/94, Art. 7(1)(b))*

A three-dimensional trade mark in the shape of a plastic bottle, with a stretched neck and flattened body, a roll and lateral hollows, for which registration is sought for foods for everyday consumption within Classes 29, 30 and 32 of the Nice Agreement, is devoid of any distinctive character within the meaning of Article 7(1)(b) of Regulation No 40/94 on the Community trade mark, assessed by reference to the overall impression which it gives, since the only characteristic in which the trade mark sought differs from the usual shape of a bottle containing goods such as those covered by the trade mark application

is constituted by the lateral hollows. Even if that feature could be considered unusual, alone it is not sufficient to influence the overall impression given by the trade mark sought to such an extent that it departs significantly from the norm or customs of the sector and thereby fulfils its essential function of indicating origin.

(see paras 50, 52-54)