

Case T-334/03

Deutsche Post EURO EXPRESS GmbH

v

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

(Community trade mark — EUROPREMIUM — Absolute ground for refusal —
Descriptive nature — Article 7(1)(c) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Third Chamber), 12 January 2005 II - 68

Summary of the Judgment

- 1. Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Trade mark composed of elements also used as advertising slogans — Condition for registration — Ability to be perceived as an indication of the commercial origin of the goods or services covered — Examination in the context of Article 7(1)(b) of Regulation No 40/94 — Article 7(1)(c) — Different criteria of application (Council Regulation No 40/94, Art. 7(1)(b) and (c))*

2. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks composed exclusively of signs or indications which may serve to designate the characteristics of goods — Word sign 'EUROPREMIUM' (Council Regulation No 40/94, Art. 7(1)(c))*

1. Registration of a Community trade mark which consists of signs or indications that are also used as advertising slogans, indications of quality or incitements to purchase the goods or services covered by that mark is not excluded as such by virtue of such use on the sole condition that the mark may be perceived immediately as an indication of the commercial origin of the goods or services in question, so as to enable the relevant public to distinguish, without any possibility of confusion, the goods or services of the owner of the mark from those of a different commercial origin.
- specific, precise and objective manner the essential characteristics of the goods and services at issue.
- (see paras 38-39, 41)

That ability of such a sign to be perceived as an indication of the commercial origin of the goods and services must be assessed in the context of Article 7(1)(b) of Regulation No 40/94.

By contrast, to come within the scope of Article 7(1)(c) of Regulation No 40/94, a trade mark must serve to designate in a

2. It has not been shown that the word sign EUROPREMIUM, for which registration as a Community trade mark is sought, inter alia, for goods intended for packaging, storage or transport, advertising, management or business assistance services or transport and storage services in Classes 16, 20, 35 and 39 of the Nice Agreement and which could be understood by the average English-speaking consumer as a reference to high-quality European goods and services, may serve directly to designate, within the meaning of Article 7(1)(c) of Regulation No 40/94, those goods and services.

First, the sign at issue is not composed of elements descriptive of the goods and services referred to since the prefix 'euro' does not designate them either directly or by reference to one of their essential characteristics and the word 'premium' is merely a laudatory term evoking a characteristic that the applicant seeks to attribute to its own goods, yet without informing consumers of the specific and objective characteristics of the goods or services offered.

Secondly, it is not established that that the term 'europremium', taken as a whole, is or could be a generic or usual name to identify or distinguish the goods or services concerned.

(see paras 28, 34, 36, 43, 45-46)