

# Joined Cases T-79/01 and T-86/01

**Robert Bosch GmbH**

v

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

(Community trade mark — Kit Pro and Kit Super Pro — Absolute grounds  
for refusal — Article 7(1)(b) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Fourth Chamber), 20 November  
2002 . . . . . II-4884

## Summary of the Judgment

1. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character — ‘Kit Pro’ and ‘Kit Super Pro’  
(Council Regulation No 40/94, Art. 7(1)(b))*

2. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character — Examination in the case of a compound mark*  
(Council Regulation No 40/94, Art. 7(1)(b))
3. *Community trade mark — Decisions of the Office — Legality — Examination by the Community judicature — Criteria*  
(Council Regulation No 40/94)

1. Under 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 registration of 'Kit Pro' and 'Kit Super Pro', applied for in respect of parts for repairing drum brakes in land vehicles, those combinations of words are devoid of any distinctive character in relation to those goods.
2. In the context of the examination of the absolute ground for refusal referred to in Article 7(1)(b) of Regulation No 40/94 on the Community trade mark, and in respect of a trade mark made up of several components (a compound mark), for the purposes of assessing its distinctive character, it is appropriate to consider the mark as a whole. However, that is not incompatible with an examination of each of the mark's individual components in turn.

Each of the trade marks applied for consists of a combination of components, each of which is devoid of distinctive character as regards those goods and there does not appear to be any concrete evidence to show that the marks, considered as a whole, are greater than the sum of their parts.

(see paras 18, 28, 30-31)

The fact that a compound trade mark consists only of components devoid of distinctive character as regards the goods or services concerned is evidence which generally justifies the conclusion that that trade mark, considered as a whole, is also devoid of distinctive character in relation to those goods or services. Such a conclusion can be dismissed only if concrete evidence,

such as, for example, the way in which the various components are combined, indicates that the compound trade mark, considered as a whole, is greater than the sum of its parts.

(see paras 22, 29)

Harmonisation in the Internal Market (Trade Marks and Designs) are called on to take under Regulation No 40/94 are adopted in the exercise of circumscribed powers and are not a matter of discretion. Therefore, the registrability of a sign as a Community trade mark must be assessed solely on the basis of that regulation, as interpreted by the Community judicature, and not on the basis of a previous practice of the Boards of Appeal.

3. Decisions concerning registration of a sign as a Community trade mark which the Boards of Appeal of the Office for

(see para. 32)