

Case T-234/01

Andreas Stihl AG & Co. KG

v

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

(Community trade mark — Colours — Combination of orange and grey —
Absolute ground for refusal — Distinctive character — Article 7(1)(b) of
Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Fourth Chamber), 9 July 2003 . . . II - 2869

Summary of the Judgment

*Community trade mark — Definition and acquisition of the Community trade mark —
Absolute grounds for refusal — Signs devoid of any distinctive character — Com-
bination of shades of orange and grey
(Council Regulation No 40/94, Art. 7(1)(b))*

A trade mark consisting of a combination of two colours, namely an orange rectangle corresponding to colour reference Pantone 164c above a grey rectangle corresponding to colour reference Pantone 428u, in respect of which registration is sought for machines in Class 7 of the Nice Classification, is devoid of distinctive character in respect of the products referred to for the purposes of Article 7(1)(b) of Regulation No 40/94 on the Community trade mark. When viewed as a whole, such a sign, composed simply of a combination of a shade of orange and a shade of grey, is abstract and imprecise in relation to the

products in question and does not show any systematic arrangement or definite separation of those colours. Consequently, the relevant public will not see in that combination a sign that products thus coloured come from the same undertaking, but will rather see it merely as an aspect of the finish of the products.

(see paras 35-36, 42-43)