

## Case T-302/03

**PTV Planung Transport Verkehr AG**

**v**

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

(Community trade mark — Application for the Community word mark map&guide  
— Absolute grounds for refusal — Descriptive character — Lack of distinctive  
character — Article 7(1)(b) and (c) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Second Chamber), 10 October 2006 II - 4041

### Summary of the Judgment

1. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Separate examination of the various grounds for refusal (Council Regulation No 40/94, Art. 7(1))*
2. *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))*

1. Each of the grounds for refusal to register listed in Article 7(1) of Regulation No 40/94 on the Community trade mark is independent of the others and requires separate examination. Moreover, it is necessary to interpret those grounds for refusal in the light of the general interest which underlies each of them. The general interest to be taken into consideration when examining each of those grounds for refusal may, or even must, reflect different considerations, depending on the ground for refusal in question. However, there is a clear overlap in scope between the grounds for refusal set out in subparagraphs (b) to (d) of that provision. In particular, a word mark which is descriptive of the characteristics of goods or services for the purposes of Article 7(1)(c) of Regulation No 40/94 is, on that account, necessarily devoid of any distinctive character in relation to those goods or services within the meaning of Article 7(1)(b) of the same regulation.
2. The word mark map&guide, for which registration is sought under 'computer software' and 'computer programming' in Classes 9 and 42 respectively of the Nice Agreement is devoid of distinctive character in relation to the goods concerned within the meaning of Article 7(1)(b) of Regulation No 40/94 on the Community trade mark since, for the average consumer from the English-speaking general public, the sign is descriptive of the goods and services covered by the application for registration. In the English-speaking zone of the Community, the sign may serve to designate computer software and computer programming services the function of which is to provide (city) maps and (travel) guides. It follows that the semantic content of the sign map&guide enables the relevant public to establish immediately, and without reflection, a specific and direct relationship with the computer software and the computer programming services for computers providing the function of (city) maps and (travel) guides.

(see paras 33, 34)

(see paras 47, 51)