

Case T-138/00

Erpo Möbelwerk GmbH

v

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

(Community trade mark — DAS PRINZIP DER BEQUEMLICHKEIT —
Absolute grounds for refusal —
Article 7(1)(b) and (c) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Fourth Chamber), 11 December
2001 II - 3741

Summary of the Judgment

Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusing registration — Marks composed exclusively of signs or indications which may serve to designate the characteristics of a product — Signs devoid of any distinctive character — ‘DAS PRINZIP DER BEQUEMLICHKEIT’ (Council Regulation No 40/94, Art. 7(1)(b) and (c))

In order to be caught by Article 7(1)(c) of Regulation No 40/94 on the Community trade mark, a mark must consist 'exclusively' of signs or indications which may serve to designate a characteristic of the goods or services concerned. As regards a word sign composed of several elements, it follows from that requirement that descriptiveness must be assessed on the basis of all the elements of which the word sign is composed and not on the basis of only one of those elements. Consequently, as regards the registration of 'DAS PRINZIP DER BEQUEMLICHKEIT' as a Community trade mark sought in respect of land vehicles and their parts, and household and office furniture, even if the 'Bequemlichkeit' element designates, on its own, a quality of the goods concerned which may be relevant when the class of persons targeted makes the decision to purchase, 'DAS PRINZIP DER BEQUEMLICHKEIT', when considered on the basis of all its elements and read in its entirety, cannot be regarded as consisting exclusively of signs or indications which may serve to designate the quality of the goods concerned.

Moreover, as regards the assessment of distinctiveness, it is not appropriate to apply to slogans criteria which are stricter than those applicable to other types of sign. The words in question could only be regarded as lacking any distinctive character, on the basis of Article 7(1)(b) of Regulation No 40/94, if it were demonstrated that the combination of the words 'das Prinzip der...' ('the principle of...') alone with a term designating a characteristic of the goods or services concerned is commonly used in business communications and, in particular, in advertising.

(see paras 27-28, 44, 46)