

Case T-130/01

Sykes Enterprises, Incorp.

v

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

(Community trade mark — REAL PEOPLE, REAL SOLUTIONS —
Absolute ground for refusal — Distinctive character — Article (7)(1)(b) of
Regulation No 40/94)

Judgment of the Court of First Instance (Second Chamber), 5 December
2002 II-5181

Summary of the Judgment

1. *Community trade mark — Definition and acquisition of the Community trade mark — Signs capable of constituting a trade mark — Signs used also as promotional slogans — Condition — Distinctiveness*
(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 — ‘REAL PEOPLE, REAL SOLUTIONS’*
(Council Regulation No 40/94, Art. 7(1)(b))

1. Registration under Regulation No 40/94 on the Community trade mark of a 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. However, a sign which fulfils functions other than that of a trade mark is only distinctive for the purposes of Article 7(1)(b) of the regulation if it 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.

(see paras 19-20)

2. 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. The registration of

‘REAL PEOPLE, REAL SOLUTIONS’ for telemarketing (Class 35 of the Nice Agreement), computer hardware maintenance (Class 37), and technical support services for the computer industry, computer services, computer functional testing consulting services for computer software producers and users, customer support services, database conversion services, custom writing and text editing and translating services for product information for others, and navigational services (Class 42), is devoid of distinctive character.

The sign is composed of a configuration of words which, taken as a whole, have an independent meaning and is thus easily understood as signifying that the services consist in providing pragmatic solutions devised by and for real people. It will therefore be perceived by the relevant public primarily as a promotional slogan, based on its inherent meaning, rather than as a trade mark.

(see paras 17, 26, 30)