

# Case T-121/00

**Procter & Gamble Company**

**v**

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

(Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Second Chamber), 19 September  
2001 . . . . . II-2781

## Summary of the Judgment

1. *Community trade mark — Appeals procedure — Appeals before the Community judicature — Actions for annulment of measures — Interest in bringing proceedings (Council Regulation No 40/94, Art. 63)*

2. *Community trade mark — Definition and acquisition of the Community trade mark — Signs capable of constituting a trade mark — Shape — Colour — Condition — Distinctive character*  
(Council Regulation No 40/94, Arts 4 and 7(1)(b))
3. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Signs devoid of any distinctive character — Three-dimensional mark consisting of the shape and colour of the product — Distinctive character — Criteria by reference to which such character assessed*  
(Council Regulation No 40/94, Art. 7(1)(b))
4. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Signs devoid of any distinctive character — Features of a three-dimensional mark suggesting certain of the product's qualities without being descriptive — Effect on the assessment of distinctive character*  
(Council Regulation No 40/94, Art. 7(1)(b) and (c))
5. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Signs devoid of any distinctive character — Three-dimensional mark — Square tablet with slightly rounded edges and corners, white with green and blue speckles, for washing machine and dishwasher products*  
(Council Regulation No 40/94, Art. 7(1)(b))

1. An action brought under Article 63 of Regulation No 40/94 on the Community trade mark is not admissible unless the applicant has an interest in seeing the contested measure annulled. Such an interest exists only if annulment of the measure is of itself capable of having legal consequences.

mark that both a product's shape and its colours fall among the signs which may constitute a Community trade mark. However, the fact that a category of signs is, in general, capable of constituting a trade mark does not mean that signs belonging to that category necessarily have distinctive character for the purposes of Article 7(1)(b) of Regulation No 40/94 in relation to a specific product or service.

(see para. 12)

2. It is clear from Article 4 of Regulation No 40/94 on the Community trade

(see para. 51)

3. Article 7(1)(b) of Regulation No 40/94 on the Community trade mark does not distinguish between different categories of trade marks. The criteria for assessing the distinctive character of three-dimensional trade marks consisting of the shape of the product itself are therefore no different from those applicable to other categories of trade marks.

Nevertheless, when those criteria are applied, account must be taken of the fact that the perception of the relevant section of the public is not necessarily the same in relation to a three-dimensional mark consisting of the shape and the colours of the product itself as it is in relation to a word mark, a figurative mark or a three-dimensional mark not consisting of the shape of the product. Whilst the public is used to recognising the latter marks instantly as signs identifying the product, this is not necessarily so where the sign is indistinguishable from the appearance of the product itself.

(see paras 54-55)

4. It does not follow from the fact that the features of a three-dimensional mark

suggest certain of the product's qualities without, however, being capable of being considered a descriptive indication in terms of Article 7(1)(c) of Regulation No 40/94 on the Community trade mark that those features necessarily confer a distinctive character on the mark. Where the target sector of the public sees the presence of those features as a suggestion that the product has certain qualities, and not as an indication of its origin, there is no distinctive character.

(see para. 60)

5. According to 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 application for registration for washing machine or dishwasher products of a three-dimensional trade mark in the form of a square tablet with slightly rounded edges and corners, which is white with blue and green and blue speckles, the tablet is devoid of any distinctive character.

Given the overall impression created by the shape of the tablet and the arrangement of its colours, the mark applied

for, which consists of a combination of obvious features typical of the product concerned, will not enable consumers to distinguish the products concerned from those having a different trade

origin when they come to select a product for purchase.

(see paras 62, 64, 69)