

2. Sets the amount of the fine imposed on the applicants under Article 2 of the Decision at EUR 20 million;
3. Dismisses the remainder of the application;
4. Orders the applicants to bear two thirds of their own costs and to pay two thirds of the costs incurred by the Commission, and the Commission to bear one third of its own costs and to pay one third of the costs incurred by the applicants.

**Judgment of the Court of First Instance (First Chamber)  
of 12 September 2007 — Cain Cellars v OHIM (Device of a pentagon)**

**(Case T-304/05)**

Community trade mark — Application for a figurative Community trade mark consisting of the device of a pentagon — Absolute ground for refusal — Absence of distinctive character — Simplicity of the sign

*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)) (see paras 23-26)*

**Re:**

ACTION brought against the decision of the First Board of Appeal of OHIM of 23 May 2005 (Case R 975/2004-1) concerning the registration of the device of a pentagon as a Community trade mark.

**Information relating to the case**

Applicant for the Community trade mark:	Cain Cellars, Inc.
Community trade mark sought:	Pentagonal figurative mark for the goods 'wine' in Class 33 — Application No 3425121
Decision of the Examiner:	Application for registration dismissed
Decision of the Board of Appeal:	Appeal dismissed

**Operative part**

The Court:

1. Dismisses the appeal;
2. Orders Cain Cellars, Inc. to pay the costs.

**Judgment of the Court of First Instance (Second Chamber) of 12 September 2007 — Philip Morris Products v OHIM (Shape of a packet of cigarettes)**

**(Case T-140/06)**

Community trade mark — Application for a three-dimensional Community trade mark — Shape of a packet of cigarettes — Refusal of registration — Absolute grounds for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94

*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)) (see paras 26, 27)*