

# Case T-441/05

**IVG Immobilien AG**

**v**

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

(Community trade mark — Figurative signs — Absolute grounds for refusal of registration — Lack of distinctiveness — Article 7(1)(b) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Fourth Chamber), 13 June 2007 . . . II - 1940

## Summary of the Judgment

1. *Community trade mark — Definition and acquisition of the Community trade mark — Signs capable of constituting a mark*  
(Council Regulation No 40/94, Arts 4 and 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*  
(Council Regulation No 40/94, Art. 7(1)(b) and (3))

3. *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, Arts 4 and 7(1)(b))*
4. *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, Arts 4 and 7(1)(b))*

1. Whilst the list of examples of signs capable of being represented graphically of which a trade mark may consist, contained in Article 4 of Regulation No 40/94 on the Community trade mark, expressly refers, inter alia, to letters and numerals, the fact that a category of signs is, in general, capable of constituting a trade mark for the purposes of that provision does not mean that those signs necessarily have distinctive character for the purposes of Article 7(1)(b) of the regulation in relation to a particular product or service.
2. The distinctive character of a trade mark required by Article 7(1)(b) of Regulation No 40/94 must, having regard to all the relevant facts and circumstances, be assessed by reference, first, to the goods or services in respect of which registration is sought and, second, to the perception of the relevant persons, namely the consumers of the goods or services.

Signs that are incapable of identifying specifically the origin of the goods or services designated and enabling the consumer who acquired them to repeat the experience, if it proves to be positive, or to avoid it, if it proves to be negative, on the occasion of a subsequent acquisition are devoid of any distinctive character.

Such greater difficulty as might be encountered in the specific assessment of the distinctive character of certain trade marks cannot justify the assumption that they are a priori devoid of any distinctive character or that they can acquire such character only through use, pursuant to Article 7(3) of Regulation No 40/94.

(see paras 37-39)

Moreover, a minimum degree of distinctiveness is sufficient to prevent application of the absolute ground for refusal laid down by Article 7(1)(b) of Regulation No 40/94.

(see paras 40-43)

3. A printing symbol forming part of a standardised character font cannot, without infringing Article 4 of Regulation No 40/94 on the Community trade mark, be regarded as not of itself having the minimum degree of distinctiveness required by Article 7(1)(b) of the regulation to be eligible for registration as a Community trade mark.

To deduce, therefore, from the absence of notable specific graphic features in comparison to a standard character font, that a claimed mark lacks distinctiveness is to misapply Article 4 and Article 7(1)(b) of Regulation No 40/94.

(see paras 47, 52)

4. A sign's lack of distinctive character, within the meaning of Article 7(1)(b) of Regulation No 40/94 on the Community trade mark, cannot arise merely from the finding that it does not look unusual or striking.

Registration of a sign as a Community trade mark depends not on a finding of a specific level of creativity or imaginativeness on the part of the proprietor of the trade mark, but on the ability of the sign to distinguish the goods or services of the applicant for the trade mark from goods or services offered by competitors.

(see paras 49, 50)