

**Judgment of the Court of First Instance (Fifth Chamber) of 15 November 2007**  
**— Enercon v OHIM (Wind turbine)**  
**(Case T-71/06)**

Community trade mark — Application for a three-dimensional Community trade mark depicting the outer casing of the nacelle of a wind turbine — Absolute grounds for refusal — Lack of distinctive character — Article 7(1)(b) and (3) 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, 31)*

**Re:**

ACTION brought against the decision of the Second Board of Appeal of OHIM of 30 November 2005 (Case R 179/2005-2) refusing registration of a three-dimensional mark (a section of a wind turbine in the form of an American football) as a Community trade mark.

**Information relating to the case**

Applicant for the Community trade mark:	Enercon GmbH
Community trade mark sought:	Three-dimensional mark representing the outer casing of the nacelle of a wind turbine for goods in Class 7 — Application No 2496743
Decision of the Examiner:	Refusal of registration
Decision of the Board of Appeal:	Appeal dismissed

## Operative part

The Court:

1. Dismisses the action;
2. Orders Enercon GmbH to pay the costs.

### **Order of the President of the Court of First Instance of 16 November 2007 — Dimos Peramatos v Commission**

**(Case T-312/07 R)**

Application for interim measures — Decision to recover financial assistance —  
Application for suspension of operation of a measure — Admissibility — Lack of  
urgency

1. *Applications for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Prima facie case — Urgency — Cumulative nature — Weighing-up of all the interests at stake (Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2)) (see paras 10, 11)*
2. *Applications for interim measures — Suspension of operation of a measure — Conditions of admissibility — Prima facie admissibility of the main action (Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2)) (see paras 22-24)*
3. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Serious and irreparable damage (Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2)) (see paras 34-36)*