

Case T-15/05

Wim De Waele

v

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

(Community trade mark — Three-dimensional mark — Shape of a sausage —
Absolute grounds for refusal — Distinctive character — Article 7(1)(b) of
Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Third Chamber), 31 May 2006 . . . II - 1513

Summary of the Judgment

*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))*

The three-dimensional mark consisting of the shape of a sausage, for which registration is sought in respect of gut for making sausages falling within Class 18 of the Nice Agreement, is devoid of any distinctive character, in relation to the goods concerned, within the meaning of Article 7(1)(b) of Regulation No 40/94 on the Community trade mark.

if there are no identical shapes, it does not enable those in the charcuterie business and end consumers in general to distinguish the gut marketed by the applicant or charcuterie packed by him from those of other undertakings without conducting an analytical or comparative examination and without paying particular attention.

The shape applied for looks like a variant of the basic shapes for charcuterie, so that, even

(see para. 40)