

Pleas in law and main arguments

The Community trade mark concerned:	A three-dimensional mark in the form of a flat-bottomed pouch — Application No 573 048
Goods or services:	After restriction of the goods and services categories: Goods in class 32 (Fruit drinks and Fruit juices)
Decision contested before the Board of Appeal:	Examiner's refusal to register
Decision of the Board of Appeal:	Rejection of the applicant's complaint
Grounds of claim:	<ul style="list-style-type: none"> — Infringement of Article 7(1)(c) of Regulation (EC) No 40/94 ⁽¹⁾; — No need to exclude the trade mark from registration as a mark; — Infringement of Article 7(1)(b) of Regulation (EC) No 40/94; — German registered marks for flat-bottomed pouches.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20.12.1993 on the Community trade mark (OJ 1993 L 11, p. 1).

Action brought on 8 May 2002 by SiSi-Werke GmbH & Co. Betriebs KG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-150/02)

(2002/C 180/47)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 8 May 2002 by SiSi-Werke GmbH & Co. Betriebs KG, of Eppelheim, Germany, represented by H. Eichmann, G. Barth, U. Blumenröder, C. Niklas-Falter, M. Kinkeldey, K.Brandt, A. Franke, U. Stephani, B. Allekotte, E. Pfrang, K. Lochner and B. Ertle, lawyers.

The applicant claims that the Court should:

- annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 February 2002 in case R 723/1999-2, relating to Community trade mark application number 573 626, in so far as it relates to goods in Class 32 of the Nice Agreement corresponding to the following description: fruit drinks and fruit juices;
- order the defendant to pay the costs.

Pleas in law and main arguments

Trade mark applied for:	Three-dimensional mark in the shape of an upright bottle — application No 573 626
Goods or services:	After limiting the list of goods and services: goods in Class 32 (fruit drinks and fruit juices)

Decision contested before the Board of Appeal:	Refusal to register by the Examiner
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Decision of the Board of Appeal:	Dismissal of the applicant's appeal
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Pleas in law relied on:	— Infringement of Article 7(1)(c) of Regulation No 40/94 ⁽¹⁾
	— No need to refuse the mark claimed registration
	— Infringement of Article 7(1)(b) of Regulation No 40/94
	— German registrations for upright bottles

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).