

Case T-359/99

Deutsche Krankenversicherung AG (DKV)

v

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

(Community trade mark — Word mark EuroHealth — Absolute ground for refusal — Descriptive character — Distinctive character — Article (7)(1)(b) and (c) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Second Chamber), 7 June 2001 II-1648

Summary of the Judgment

1. *Community trade marks — Definition and acquisition of the Community trade mark — Absolute grounds for refusing registration — Marks composed exclusively of signs or indications which may serve to designate the characteristics of a product — 'EuroHealth' (Council Regulation No 40/94, Art. 7(1)(c))*

2. *Community trade marks — Definition and acquisition of the Community trade mark — Application for registration of a sign in respect of all the services falling within a single category — Refusal of application by examiner — Assessment by the Board of Appeal of the absolute grounds for refusal relating to those services as a whole (Council Regulation No 40/94, Arts 7 and 38)*
3. *Community trade marks — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Lack of distinctiveness of the sign and descriptive character thereof — Independent analysis (Council Regulation No 40/94, Art. 7(1)(b) and (c))*

1. So far as concerns registration of the word 'EuroHealth' as a Community trade mark in respect of services falling within the category of 'insurance', that word may serve, in the English-speaking areas of the Community, to designate a specific category of insurance services, namely health insurance services which can be offered at the European level. The word thus allows the relevant section of the public to establish immediately and without further reflection a definite and direct association with the health insurance services which fall within the category of 'insurance'. Accordingly, registration of the word EuroHealth in respect of insurance services may be refused on the basis of Article 7(1)(c) of Regulation No 40/94 on the Community trade mark.

question, on the other, is not sufficiently concrete and direct to demonstrate that that sign enables the target consumers to identify those services immediately and that it is therefore descriptive of such services. Accordingly, the relationship between the word 'EuroHealth' and the financial services concerned is too indeterminate and vague to be caught by the prohibition laid down in Article 7(1)(c) of Regulation No 40/94.

(see paras 26-27, 36-37)

As regards registration of the same word, EuroHealth, sought in respect of services falling within the category of 'financial affairs', the association between the semantic content of the sign, that is to say 'health in Europe', on the one hand, and the services in

2. Where registration of a sign as a Community trade mark is sought in respect of all services falling within a single category without distinguishing between them, the assessment of the Board of Appeal of the Office for Harmonisation in the Internal Market (trade marks and designs) which is called upon to hear and determine an appeal against the refusal, under Arti-

cle 38 of Regulation No 40/94 on the Community trade mark, by the examiner to register the sign must relate to those services as a whole.

(see para. 33)

No 40/94 on the Community trade mark, namely lack of distinctiveness of the sign and descriptive character thereof, could overlap with each other to some extent, it is none the less true that each of those grounds has its own sphere of application and that they must, therefore, be subject to an independent analysis.

3. Even if it were to be accepted that the elements capable of establishing the two absolute grounds of refusal to register a mark set out in Article 7(1)(b) and (c) of Regulation

(see para. 48)