

Case T-234/06

Giampietro Torresan

v

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

(Community trade mark — Invalidity proceedings — Community word mark
CANNABIS — Absolute ground for refusal — Descriptive character — Articles
7(1)(c) and 51(1)(a) of Regulation (EC) No 40/94 (now Articles 7(1)(c) and 52(1)(a) of
Regulation (EC) No 207/2009)

Judgment of the Court of First Instance (Second Chamber), 19 November
2009 II - 4187

Summary of the Judgment

*Community trade mark — Surrender, revocation and invalidity — Absolute grounds of
invalidity — Registration contrary to Article 7(1)(c) of Regulation No 40/94
(Council Regulation No 40/94, Arts 7(1)(c) and 51(1)(a))*

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The mark CANNABIS should not have been registered as a Community trade mark for 'beers' and 'wine, spirits, liqueurs, sparkling beverages, sparkling wine, champagne' in Classes 32 and 33 respectively of the Nice Agreement on account of the existence of the absolute ground of refusal referred to in Article 7(1)(c) of Regulation No 40/94 on the Community trade mark.

The word sign CANNABIS inherently constitutes, for consumers, a simple and direct indication of one of the possible ingredients of the goods for which the mark was registered. Accordingly, the word sign CANNABIS goes far beyond the realm of suggestion and comes within the realm of description. That sign must therefore be regarded as descriptive and not as suggestive or allusive.

The single word 'cannabis' used as a trade mark may be held to be descriptive if it refers, actually or potentially, to one of the characteristics of the product, namely one of the ingredients that may be used in the manufacture of the beverages in question. In view of the supply of beverages containing hemp which already exists on the market, the sign CANNABIS may at present designate one of

the ingredients used in the manufacture of the goods for which the mark was registered.

Furthermore, the fact that a word has a number of meanings is irrelevant in determining whether it is descriptive. Thus, the fact that the word 'cannabis' may have three different meanings has no role to play in ascertaining whether it has a descriptive character. It is sufficient for there to be a direct and specific relationship between one of the meanings and the goods in question for Article 7(1)(c) of Regulation No 40/94 to be applicable.

It follows that the sign CANNABIS refers to the cannabis plant, which is well known to the public as a result of media coverage and is used in the manufacturing processes of certain foodstuffs and beverages. The average consumer will therefore immediately and without further thought make a connection between the sign in question and the characteristics of the goods in respect of which the mark has been registered, all of which renders the sign descriptive.

(see paras 34, 36-38)