

**Judgment of the General Court (Third Chamber) of 27 April 2010 —
Freixenet v OHIM (Shape of a frosted black matt bottle)**

(Case T-110/08)

(Community trade mark — Application for a Community trade mark representing a frosted black matt bottle — Absolute ground for refusal — Lack of distinctive character — No distinctive character acquired through use — Article 7(1)(b) and 7(3) of Regulation (EC) No 40/94 (now Article 7(1)(b) and 7(3) of Regulation (EC) No 207/2009) — Duty to state reasons — Rights of the defence — Article 73 of Regulation No 40/94 (now Article 75 of Regulation No 207/2009))

Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character — Exception — Acquisition of distinctive character through use (Council Regulation No 40/94, Art. 7(1)(b), and (3)) (see paras 68, 78, 84, 102, 119-120)

Re:

ACTION brought against the decision of the First Board of Appeal of OHIM of 20 November 2007 (Case R 104/2001-1) concerning an application for registration of a sign representing a frosted black matt bottle as a Community trade mark.

Information relating to the case

Applicant for the Community trade mark:	Freixenet SA
Community trade mark sought:	Three-dimensional trade mark in the shape of a frosted matt black bottle for goods in Class 33 — Application No 32540

Decision of the Examiner:	Registration refused
Decision of the Board of Appeal:	Appeal dismissed

Operative part

The Court:

1. Dismisses the action;
2. Orders Freixenet, SA to pay the costs.

Judgment of the General Court (Fifth Chamber) of 28 April 2010 — Oxley Threads v Commission

(Case T-448/05)

(Competition — Agreements, decisions and concerted practices — European market in thread for automotive customers — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Fines — Gravity of the infringement — Mitigating circumstances — Cooperation — Proportionality — Equal treatment — Guidelines on the method of setting fines)

1. *Competition — Fines — Amount — Determination — Criteria — Gravity of the infringement — Assessment factors (Council Regulation No 17, Art. 15(2); Commission Notice 98/C 9/03) (see paras 31, 34, 37)*
2. *Competition — Fines — Amount — Determination — Deterrent effect of the fine (Art. 81 EC; Council Regulation No 17, Art. 15; Commission Notice 98/C 9/03) (see para. 61)*