

Case C-265/09 P

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

v

BORCO-Marken-Import Matthiesen GmbH & Co. KG

(Appeal — Community trade mark — Application for registration of the figurative sign “α” — Absolute grounds for refusal — Distinctive character — Mark consisting of a single letter)

Opinion of Advocate General Bot delivered on 6 May 2010	I - 8267
Judgment of the Court (First Chamber), 9 September 2010	I - 8280

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 — Assessment of distinctive character — Sign consisting of a single letter
(Council Regulation No 40/94, Arts 4 and 7(1)(b))*

The requirement of an examination as to whether, on the facts, the sign in question is capable of distinguishing the goods or services designated from those of other undertakings, allows for the accommodation of the ground for refusal laid down in Article 7(1)(b) of Regulation No 40/94 on the Community trade mark, with the general capacity of a sign to constitute a trade mark recognised in Article 4 thereof.

In that regard, even though it is apparent from the case-law that the Court has recognised that there are certain categories of signs which are, *prima facie*, less likely to have distinctive character initially, the Court, nevertheless, has not exempted the trade mark authorities from having to carry out an examination of their distinctive character based on the facts.

In relation, more particularly, to a sign consisting of a single letter with no graphic

modifications, registration of a sign as a trade mark is not subject to a finding of a specific level of linguistic or artistic creativity or imaginativeness on the part of the proprietor of the trade mark.

It follows that, particularly as it may prove more difficult to establish distinctiveness for marks consisting of a single letter than for other word marks, the Office for Harmonisation in the Internal Market (Trade Marks and Designs) is required to assess whether the sign at issue is capable of distinguishing the different goods and services in the context of an examination, based on the facts, focusing on those goods or services.

(see paras 36-39)