



## Reports of Cases

Case C-98/11 P

**Chocoladefabriken Lindt & Sprüngli AG**

v

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

(Appeal — Community trade mark — Absolute ground for refusal — No distinctive character — Three-dimensional sign consisting of the shape of a chocolate rabbit with a red ribbon)

### 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 — Exception — Acquisition of distinctive character through use — Mark devoid of any distinctive character throughout the Community*

*(Council Regulation No 40/94, Art. 7(3))*

Under Article 7(3) of Regulation No 40/94 on the Community trade mark, the absolute ground for refusal to register set out in Article 7(1)(b) of that regulation does not preclude registration of a trade mark if the trade mark has become distinctive in relation to the goods or services for which registration is requested through the use which has been made of it.

A mark can be registered by virtue of Article 7(3) of that regulation only if evidence is provided that it has acquired, through the use which has been made of it, distinctive character in the part of the European Union in which it did not, *ab initio*, have such character.

Where it had not been established that the mark for which registration was sought had inherent distinctive character and that that was the case throughout the European Union, that mark must have acquired distinctive character through use throughout the European Union.

Even if it is true that the acquisition by a mark of distinctive character through use must be proved for the part of the European Union in which that mark did not, *ab initio*, have such character, it would be unreasonable to require proof of such acquisition for each individual Member State.

(see paras 59-62)