



Reports of Cases

Judgment of the General Court (Sixth Chamber) of 26 October 2017 – Erdinger Weißbräu Werner Brombach v EUIPO (Shape of a large glass)

(Case T-857/16)

(European Union trade mark — International registration designating the European Union — Three-dimensional mark — Shape of a large glass — Absolute ground for refusal — Lack of distinctive nature — Article 7(1)(b) of Regulation (EC) No 2017/2009 (now Article 7(1)(b) of Regulation (EU) 2017/1001))

1. *EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Marks devoid of any distinctive character – Three-dimensional mark constituted by the shape of the product – Distinctive character – Criteria for assessment*

(Council Regulation No 207/2009, Art. 7(1)(b))

(see paras 18-21)

2. *EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Marks devoid of any distinctive character – Three-dimensional trade marks consisting of the shape of the product itself – Distinctive character – Criteria for assessment – Shape at issue being a (variant) of the typical shapes of the type of goods concerned – Fact not sufficient to establish distinctiveness of the mark*

(Council Regulation No 207/2009, Art. 7(1)(b))

(see paras 22-24)

3. *EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Lack of distinctiveness – Trade mark made up of several elements – Possible for the competent authority to examine each of the elements making up the trade mark – Need to take account of the overall perception of the combination by the relevant public*

(Council Regulation No 207/2009, Art. 7(1)(b))

(see para 25)

Re:

ACTION brought against the decision of the Second Board of Appeal of EUIPO of 20 September 2016 (Case R 659/2016-2) concerning the international registration designating the European Union of the three-dimensional mark constituted by the shape of a large glass.

Operative part

The Court:

1. Dismisses the action;
2. Orders Erdinger Weißbräu Werner Brombach GmbH & Co. KG to pay the costs.