

paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; advertisement boards of paper or cardboard, albums, announcement cards, bags of paper or plastic, for packaging, bags of conical paper, bibs of paper, books, calendars, cardboard labels, catalogues, charts, embroidery designs (patterns), engravings, envelopes, folders, forms, greeting cards, books, magazines, newspapers, pamphlets, newsletters and other printed publications, photographs, pictures, portraits, postcards, stationery, address plates, address stamps, adhesive tapes for stationery or household purposes, announcement cards book markers, writing pads, plastic film for wrapping, paper, cardboard and goods made from these materials; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks pencil cases, pens, writing paper, envelopes, posters, paper banners, personal organizers, notebooks and paper binders; mouse pads in class 16;

leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; all purpose bags and sporting bags, softluggage, luggage cases, backpacks, day packs, fanny packs, frame packs, knapsacks, ski packs, book bags, tote bags, duffle bags, bicycle bags, handbags, garment bags, clothing bags, suitcases, pullman cases, briefcases, wallets, umbrellas and parasols, business card cases and holders, billfolds and money clips, straps, pads and belts and all related goods to the before mentioned as far as included in class 18; and

clothing, headgear and footwear in class 25; and

— order that the Office pay the applicant's costs.

Pleas in law and main arguments

Community trade mark concerned: The national word mark 'BUILT TO RESIST' for goods and services in classes 16, 18 and 25 — application No 293 7522

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) and 7(1)(c) of Council Regulation 40/94.

First, with regards to the descriptiveness of the word mark claimed, the applicant submits that the latter enables the relevant public to discern immediately and without further reflection any of the characteristics of the goods offered. The simple fact that the word mark at stake is evocative of the goods claimed is not sufficient, according to the applicant, to be refused registration and thus, the afforded protection on the basis of Article 7(1)(c). Moreover, the applicant contends that pursuant to established case-law, even if a slogan may also serve marketing or advertising purposes, in addition to its principal function as a trade mark, it should not be refused registration. Furthermore, the applicant submits that the fact that the word mark was registered at a national level, in the United States, for the same products, proves that it is capable of being perceived by the public and in fact for English speaking consumers, as an indication of commercial origin.

Second, with regards to its inherent distinctiveness, the applicant claims that the word mark provides at least a minimum degree of distinctiveness which should allow the registration to proceed.

Order of the Court of First Instance (Fifth Chamber) of 26 February 2007 — Rathscheck Schiefer und Dach-Systeme and Others v Commission

(Case T-198/06) ⁽¹⁾

(2007/C 95/112)

Language of the case: German

The President of the Court of First Instance (Fifth Chamber) has ordered that the case be removed from the register.

⁽¹⁾ OJ C 237, 30.9.2006.