



Reports of Cases

Judgment of the General Court (Eighth Chamber) of 22 March 2013 — Bottega Veneta International v OHIM (Shape of a bag)

(Case T-410/10)

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of a bag — Absolute grounds for refusal — Lack of distinctive character — Lack of distinctive character acquired through use — Article 7(1)(b) and (3) of Regulation (EC) No 207/2009 — Failure to take account of an element of the trade mark applied for — Rule No 9 of Regulation (EC) No 2868/95)

1. *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 (Council Regulation No 207/2009, Art. 7(1)(b)) (see paras 45, 46)*
2. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character — Three-dimensional mark consisting in the shape of the product — Distinctive character — Criteria for assessment (Regulation No 207/2009, Art. 7(1)(b)) (see paras 47-50)*
3. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character — Exception — Acquisition of distinctiveness through use — Three-dimensional mark constituted by the shape of a bag (Council Regulation No 207/2009, Art. 7(1)(b), and (3)) (see paras 53, 56, 64, 65, 68, 69, 85-87, 94-96, 99, 100)*
4. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character — Exception — Acquisition of distinctiveness through use — Criteria for assessment (Council Regulation No 207/2009, Art. 7(3)) (see paras 72-76)*

Re:

ACTION brought against the decision of the First Board of Appeal of OHIM of 16 June 2010 (Case R 1539/2009-1), concerning an application for registration of a three-dimensional sign in the shape of a bag as a Community trade mark.

Operative part

The Court:

1. Dismisses the action;
2. Orders Bottega Veneta International Sàrl to pay the costs.