



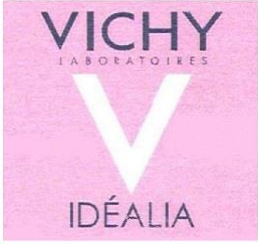
TRADE MARKS

Please note the referencing changes in this section of the report, which follow the implementation of EU Regulation 2015/2424 on 23 March 2016 and the resulting amendments to Regulation No 207/2009 on the Community Trade Mark.



A European Union trade mark, formerly a Community Trade Mark or CTM, will be referred to as an EUTM. The renamed European Union Intellectual Property Office will be abbreviated as the EUIPO, save where the original case name refers to OHIM. The Regulation considered in the decisions shall be indicated in the left hand column of the table.

Decisions of the CJ and GC

Ref no.	Application (and where applicable, earlier mark)	Comment
<p>GC T-54/15 <i>Jääkiekon SM-liiga Oy v EUIPO</i> (28.04.16) Reg 207/2009</p>	 <ul style="list-style-type: none"> - games and playthings, gymnastic and sporting articles not included in other classes (28) - sporting activities (41) - other goods and services in classes 9, 16, 25, 29, 30, 32, 33, 39, 42. 	<p>The GC upheld the BoA's decision to reject an application to register the mark in Classes 28 and 41 under Arts 7(1)(b), 7(1)(c) and 7(2).</p> <p>It was not disputed that the relevant public comprised average Finnish-speaking consumers. The GC endorsed the BoA's assessment that the relevant public would interpret the word 'Liiga' as meaning 'competitive sports league'; namely a championship, as per its meaning in Finnish. The BoA was therefore correct to find that the mark conveyed a clear and direct message relating to the intended purpose of the goods and services at issue in Classes 28 and 41 given that those goods and services may directly relate to a competitive sports division or championship.</p> <p>The GC agreed that the mark remained legible despite the handwritten appearance of the word 'Liiga' and confirmed that the black circle would be seen as a background. The stylised elements of the mark did not negate its descriptive character.</p> <p>Assessed as a whole, the mark had a sufficiently direct and specific relationship with the goods and services at issue in Classes 28 and 41 to enable the public to immediately perceive the intended purpose of the goods and services and was therefore descriptive of those characteristics under Art 7(1)(c) and devoid of</p>


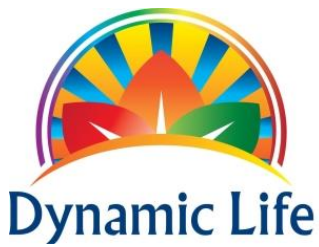
		distinctive character in relation to the goods and services at issue under Art 7(1)(b) .
<p>GC T-803/14 <i>Compagnie Gervais Danone v EUIPO; Mahou SA</i> (28.04.16) Reg 207/2009</p>	 <p>- isotonic beverages [not for medical purposes]; high energy drinks (32)</p> <p>BLU DE SAN MIGUEL</p> <p>- beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages (32)</p> <p>- telecommunications and communications services, including communications by computer terminals, digital communications and communications by global computer networks (38)</p> <p>- services for providing food and drink; temporary accommodation (43)</p>	<p>The GC upheld the BoA's decision that there was a likelihood of confusion between the marks pursuant to Art 8(1)(b).</p> <p>The GC upheld the BoA's assessment of the relevant public as European consumers with an average level of attention and endorsed the finding of identity of the goods at issue.</p> <p>The GC found that the distinctiveness of the earlier mark varied, being weaker for the part of the relevant public who understood the meaning of 'de san miguel'. The element 'blu' had correctly been given added importance by the BoA, as that element was at least as important as the other elements in the earlier mark, and even in some cases, dominant, depending on how each part of the relevant public perceived (and abbreviated) the mark. The figurative element of the mark applied for was descriptive of the goods at issue such that the word element 'b'lue' was of at least equal importance to the figurative element.</p> <p>The marks had low visual similarity and a certain degree of phonetic similarity as the mark applied for was fully included from a phonetic standpoint in the earlier mark. The phonetic similarity would be very high and the conceptual similarity enhanced for the relevant public who would abbreviate the earlier mark to 'blu'.</p> <p>A likelihood of confusion could not be ruled out, at least for the part of the public able to attribute a meaning to the expression of the earlier mark.</p>
<p>GC T-144/15 <i>L'Oreal, SA v EUIPO; Theralab – Productos Farmacêuticos e Nutracêuticos, Lda</i></p>		<p>The GC upheld the BoA's decision that there was a likelihood of confusion between the marks pursuant to Art 8(1)(b).</p> <p>The GC confirmed that the BoA had taken into account all elements of the mark applied for in its assessment of the similarity. The BoA was correct to</p>



<p>(28.04.16) Reg 207/2009</p>	<p>- perfumes, eau de cologne; gels, salts for the bath and the shower, not for medical purposes; soaps, cosmetics, in particular creams, milks, lotions, gels and powders for the face, body and hands; sun-tanning compounds (cosmetics); make-up preparations; shampoos; gels, sprays, mousses and balms for hair styling and hair care; hair waving and curling preparations; essential oils for personal use (3)</p> <p>IDEALINA</p> <p>- bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumes, essential oils, cosmetics, hair lotions; dentifrices (3)</p>	<p>conclude that the existence of two earlier third party marks (IDEAL LINE and IDEALIST) registered in respect of cosmetics, was insufficient to call into question the conclusion that the earlier mark had average distinctive character in relation to the goods at issue. The GC confirmed that the assessment of the similarity of the marks at issue could not be based upon a comparison of the earlier mark with other marks which did not form part of the case in question.</p> <p>The GC endorsed the BoA's finding of likelihood of confusion on the basis that (i) the marks at issue had weak visual similarity, a high degree of phonetic similarity and an absence of any conceptual element which would counteract these similarities, (ii) the goods at issue were identical and (iii) the relevant consumers had an average level of attention at the moment of purchase of the relevant goods.</p>
<p>GC T-503/15 <i>Aranynektár Termékgyártó és Kereskedelmi KFT v EUIPO; Natural Apícola, SL</i> (03.05.16) Reg 207/2009</p>	<p>NATÜR-BAL</p> <p>- sugar, honey, treacle; sweet spreads (honey); honey; honeys (for food); natural honey (30)</p> <p>NATURVAL</p> <p>- meat, fish, poultry and game; meat extracts; preserved frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats (29)</p> <p>- coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionary, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice (30)</p>	<p>The GC upheld the BoA's finding that there was a likelihood of confusion between the marks pursuant to Art 8(1)(b).</p> <p>The GC confirmed that the relevant public was not limited to the target consumers in the ethnic Turkish market but comprised of the general public of European Union with an average level of attention.</p> <p>The GC confirmed the identity of the goods at issue and upheld an average degree of visual similarity as the marks coincided in seven out of eight letters. Neither the presence of the umlaut in the mark applied for nor the hyphen in the earlier mark produced significant visual differences.</p> <p>The GC upheld the BoA's assessment of phonetic similarity and confirmed the marks were phonetically identical for the Spanish part of the relevant public, highly similar for a large part of the relevant public and similar for the part of the relevant public which recognised a difference in pronunciation when an umlaut was placed over the letter 'u'.</p>

		<p>The GC endorsed the BoA's finding of conceptual similarity as both marks referred to the idea of nature or something natural. The BoA was correct to conclude there was a likelihood of confusion between the marks.</p>
<p>GC T-806/14 <i>August Storck KG v EUIPO</i> (10.05.16) Reg 207/2009</p>	 <p>- confectionery, chocolate, chocolate products, pastries, ice-creams and preparations for making the aforementioned products (30)</p>	<p>The GC upheld the BoA's decision that the mark was devoid of distinctive character under Art 7(1)(b).</p> <p>The BoA was correct to conclude that the relevant public was the average European consumer with a low level of attentiveness: the goods at issue were inexpensive, everyday consumer goods which did not require a lengthy period of reflection by the consumer prior to purchase.</p> <p>The GC confirmed that, in the assessment of distinctive character, case law applicable to three-dimensional marks applied equally to figurative marks consisting of a two-dimensional representation of those goods.</p> <p>The BoA was correct to conclude that the blue, white and grey colours and graphical elements of the mark were likely to be perceived as presentational elements of the packaging rather than an indication of the commercial origin. The BoA was also entitled to find that the square shape of the mark was commonplace for the goods at issue and was clearly essential for those goods.</p> <p>The BoA was correct to reject the survey evidence submitted by August Storck, as it was limited in scope to Germany and revealed that the consumers surveyed were already familiar with the mark. The survey was therefore unable to establish the mark's distinctiveness in the EU.</p>
<p>GC T-32/15 <i>GRE Grand River Enterprises Deutschland GmbH v EUIPO</i></p>	 <p>- batteries for electric cigarettes, electronic cigarettes, electronic smoking pipes and devices intended for the vaporisation of</p>	<p>The GC upheld the BoA's decision that the mark was devoid of distinctive character under Art 7(1)(b).</p> <p>The BoA was correct to assess that the relevant public comprised English speaking average consumers of the general public as well as of a specialist</p>

<p>(12.05.16) Reg 207/2009</p>	<p>tobacco, tobacco products and tobacco substitutes (9)</p> <p>- tobacco leaves; tobacco products, included in Class 34; smokers' articles; vaporisers for tobacco, tobacco products and tobacco substitutes (34)</p>	<p>public.</p> <p>The GC held that the mark clearly had a laudatory and promotional meaning as it suggested to the relevant public the idea of a 'number 1 brand' for the goods at issue. The mark essentially consisted of an advertising slogan that lacked the minimum degree of distinctive character required, rather than being an indication of commercial origin of the relevant goods.</p> <p>The simple graphic elements of the mark did not affect the assessment of the word element of the mark. The black and red colour, the weakly distinctive font and the size difference between the word and the number lacked any special character, and brought no distinctive character to the mark as a whole.</p>
<p>GC T-590/14 <i>Zuffa, LLC v EUIPO</i> (12.05.16) Reg. 207/2009</p>	<p>ULTIMATE FIGHTING CHAMPIONSHIP</p> <p>- pre-recorded audio cassettes; phonograph records; compact discs; pre-recorded video cassettes; laser video discs; digital video discs; digital versatile discs; electronic storage media; USB flashdrives; CD-ROM discs all featuring mixed martial arts competitions, events and programs; computer game programs; computer games; computer software; motion picture films in the field of mixed martial arts and other data support media (9)</p> <p>– books and printed instructional and teaching manuals in the field of sports and entertainment; general feature and sports and entertainment magazines; fitness and entertainment magazines; newspapers in the field of sports, fitness and entertainment; posters; event programs; stickers (16)</p> <p>– action figures and accessories; hand-held electronic games; playing cards; computer game accessories and controllers (28)</p>	<p>The GC partially annulled the BoA's decision which dismissed an appeal against a refusal to register the mark pursuant to Art 7(1)(b), and (c) on the basis that, in relation to certain goods and services in Class 41, the mark had acquired distinctive character pursuant to Art 7(3).</p> <p>However, the BoA was correct to hold that all of the goods and services at issue might relate to an ultimate fighting championship, which was sufficient to establish that the mark applied for was descriptive. The mere addition of the laudatory term 'ultimate' did not render the mark any less descriptive pursuant to Art 7(1)(c).</p> <p>The BoA erred in finding that the mark was devoid of distinctive character pursuant to Art 7(1)(b) solely because the mark was descriptive.</p> <p>The GC held that, although some of the evidence by Zuffa referred to UFC, the acronym frequently appeared in association with the mark applied for. The evidence was therefore sufficient to show that the specialist public, being English speaking fans of mixed martial arts in the EU, would be likely to identify the mark as an indicator of</p>

	<p>– live stage shows; presentation of live performances; amusement park and theme park services; provision of information relating to mixed martial arts via communication and computer networks; providing news and information in the fields of sports, fitness and mixed martial arts via communication and computer networks (41)</p>	<p>the goods and services in Classes 9 and 41 which were especially intended for them.</p> <p>The GC therefore dismissed the BoA's decision in relation to the goods and services intended for the specialist public, on the basis that the mark had acquired distinctive character pursuant to Art 7(3) for those goods and services. The GC upheld the BoA's decision in so far as it applied to the other goods and services at issue, as the mark had not acquired sufficient renown for the English speaking general public in the EU. Registration of the mark was therefore refused for the remaining goods and services pursuant to Art 7(1)(b) and Art 7(1)(c).</p>
<p>GC T-749/14 <i>Peter Chung-Yuan Chang v EUIPO; BSH Hausgeräte GmbH</i> (12.05.16) Reg 207/2009</p>	<p>AROMA</p> <p>- electrical cooking utensils, namely juicer, juice extractors, pasta makers for domestic use, food processors and blenders (7)</p> <p>- electrical cooking utensils, namely convention cooking ovens for domestic use, automatic bread makers for domestic use, food steamers for domestic use, grills, deep fryers, sandwich makers, waffle makers, soup warmers, rice cookers and warmers, food dehydrators, skillets, pressure cookers, hot plates, toaster ovens and roaster ovens, ice cream makers, and slow cookers (11)</p>	<p>In invalidity proceedings, the GC annulled the BoA's decision that the mark was descriptive under Art 7(1)(c) and lacked distinctive character under Art 7(1)(b).</p> <p>Whilst the mark alluded to a desirable characteristic of foodstuffs prepared or cooked with the help of electrical cooking utensils, it did not provide the average consumer with obvious and direct information about the qualities, characteristics or intended use of the utensils themselves. The positive image of the goods alluded to by the mark did not go beyond suggestion and the connection between the mark and the goods at issue was too vague, uncertain and subjective to render the term descriptive.</p> <p>As a certain degree of interpretation was required on the part of the public to arrive at the connection between the mark and the goods, the GC held the mark was not descriptive pursuant to Art 7(1)(c). The laudatory nature of the mark could not, in itself, deprive the mark of a distinctive character and, as the mark demonstrated a certain degree of originality being uncommonly used in relation to the goods at issue, the mark was not devoid of distinctive character pursuant to Art 7(1)(b).</p>

<p>GC</p> <p>T-62/15</p> <p><i>Market Watch Franchise & Consulting, Inc. v EUIPO; El Corte Inglés</i></p> <p>(13.05.16)</p> <p>Reg 207/2009</p>	<p>MITOCHRON</p> <ul style="list-style-type: none"> - bleaching preparations and other substances for laundry use, soaps, perfumery, essential oils, cosmetics, hair lotions and dentifrices (3) - pharmaceutical and veterinary preparations, sanitary preparations, dietetic preparations for medical use, preparations of trace elements for human and animal use, food supplements for medical use, mineral food supplements, vitamin preparations (5) - advertising (35)  <ul style="list-style-type: none"> - soaps, perfumery, cosmetics (3) - commercial retailing or retailing via global computer networks (35) 	<p>The GC upheld the BoA's decision that, in relation to certain goods and services, there was a likelihood of confusion between the marks pursuant to Art 8(1)(b).</p> <p>It was not disputed that the goods in Class 3 were partly identical and partly similar. The BoA was correct to find that 'pharmaceutical and veterinary preparations, sanitary preparations' in Class 5 covered by the mark applied for were similar to a low degree to 'cosmetics' and 'soaps' covered by Class 3 of the earlier mark as they shared a similar purpose, distribution channels and might also be manufactured by the same companies.</p> <p>The BoA correctly assessed the marks as visually similar. The marks shared the word element 'mito' and the typographical elements of the earlier mark did not constitute a specific and original configuration.</p> <p>The GC confirmed the BoA's assessment of phonetic similarity (the marks shared the two syllables 'mi' and 'to' at the beginning) and agreed that the marks were conceptually highly similar due to the shared word element 'mito' meaning 'myth' in Italian.</p> <p>In view of the fact that the level of attention of the relevant public was partly high and partly average, there was a likelihood of confusion on the part of the Italian speaking relevant public.</p>
<p>GC</p> <p>T-454/15</p> <p><i>Laboratorios Ern, SA v EUIPO; Matthias Werner</i></p> <p>(03.05.2016)</p> <p>Reg 207/2009</p>	 <ul style="list-style-type: none"> - dietary supplements for humans and animals; tobacco-free cigarettes for medical purposes; vitamin preparations; medicinal drinks (5) - fruit beverages and fruit juices; fruit juice concentrates (non- 	<p>The GC upheld the BoA's finding that there was no likelihood of confusion between the marks pursuant to Art 8(1)(b).</p> <p>The GC agreed that 'tobacco-free cigarettes for medical purposes' and the goods covered by Class 32 of the mark applied for were different to the Class 5 goods covered by the earlier mark. The BoA was correct to find the remaining goods were similar to a low degree, similar to a high degree or identical.</p> <p>The GC held that, on account of the</p>

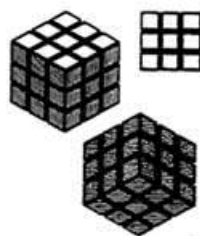
	<p>alcoholic drinks); beer (32)</p> <p>DYNAMIN</p> <p>- chemical products and specifics (1)</p> <p>- dietetic foods adapted for medical use in any shape or form (5)</p>	<p>striking figurative element of the mark applied for, 'DYNAMIC' was not a dominant element of the mark. The BoA therefore correctly assessed the marks as having low visual similarity despite the fact they shared six identical letters out of seven. The GC upheld the BoA's finding that the marks had a low degree of phonetic and conceptual similarity.</p> <p>The relevant Spanish public would not consider the striking figurative element or the word 'life' in the mark applied as descriptive. Given the heightened level of attention of the relevant public for goods for medical use, the GC confirmed there was no likelihood of confusion between the marks.</p>
<p>GC</p> <p>T-126/15</p> <p><i>El Corte Inglés, SA v EUIPO; Grup Supeco Maxor SL</i></p> <p>(24.05.16)</p> <p>Reg 207/2009</p>	<p>Supeco </p> <p>- auctioneering, retail services (35)</p> <p></p> <p>- advertising; business management; business administration; office functions (35)</p>	<p>The GC dismissed an appeal against the BoA's decision to partially uphold an appeal against the decision to uphold an opposition in respect of 'auctioneering' and 'retail services' pursuant to Art 8(1)(b).</p> <p>The OD relied on Point V of Communication No 2/12 of 20 June 2012 regarding the use of class headings in lists of goods and services in EUTM applications and concluded that Grup Supeco had intended to cover all services in the alphabetical list for Class 35 within the application, including 'auctioneering' and 'retail services'. In its assessment of similarity, the OD therefore compared the broad range of services covered by the mark applied for against the goods specifically listed within the opposition notice, namely 'advertising; business management; business administration; office functions'.</p> <p>The GC endorsed the BoA's decision that Point V of Communication No 2/12 did not apply equally to notices of opposition which relied on marks registered before 21 June 2012. On the basis of Rule 15(2)(f) of Regulation 2868/95 (as amended), the GC confirmed that a notice of opposition must contain the goods and services on which the opposition was based. It was not possible to infer</p>

		that the present opposition was based on all services covered under the alphabetical list for Class 35 and the BoA was correct to limit its comparison of the services at issue accordingly.
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AG Szpunar considers registrability of Rubik's Cube shape mark

Simba Toys GmbH & Co. KG ('Simba') v EUIPO (AG Szpunar for the CJ; C-30/15 P; 25.05.16)

AG Szpunar has given an opinion on the appeal from the GC's decision (T-450/09, reported in the *CIPA Journal*, December 2014) which dismissed a cancellation action under **Articles 7(1)(e)(i)** and **7(1)(e)(ii)** (as amended by Regulation (EU) 2015/2424) in relation to the following shape mark, registered in Class 28 for three dimensional puzzles:



AG Szpunar confirmed that the public interest underlying **Article 7(1)(e)** was to keep shapes which were related to the essential characteristics of goods in question within the public domain. **Article 7(1)(e)** served to achieve this aim under subsection (i) which prevented a single economic operator from reserving a shape which was inherent to the generic function of the goods and under subsection (ii) which ensured that an undertaking could not use trade mark law in order to indefinitely perpetuate exclusive rights relating to technical solutions.

Article 7(1)(e)(i)

AG Szpunar indicated that the GC had been correct to find that **Article 7(1)(e)(i)** was not limited to natural products (i.e. those without alternative shapes) and regulated products (whose shape was mandated by a legal standard), as the ground for refusal was designed to protect the public interest by excluding from registration shapes all of the features of which were inherent to the generic function(s) of a product. The restriction suggested by the EUIPO would prevent **Article 7(1)(e)** from fulfilling this public interest.

AG Szpunar indicated that the dispute under this ground turned on whether the category of goods being considered were three dimensional puzzles (as found by the GC) or a narrower category of puzzles in the form of a 'magic cube' (as submitted by Simba). The mark was clearly a natural shape for the latter but not the former. The assessment of the relevant category was a factual matter, which could only be challenged by a plea that the GC had distorted the facts or evidence. As Simba had not raised such a plea, AG Szpunar recommended that the challenge to the GC's decision regarding **Article 7(1)(e)(i)** be rejected as inadmissible.

Article 7(1)(e)(ii)

The GC had determined that the essential characteristics of the mark were the shape of the cube and the grid structure on each surface of the cube. In doing so, the GC based its examination on the graphical representation alone, without taking into account how the goods were used (a requirement imposed by earlier case law).

AG Szpunar considered that the GC had unduly focused on whether the graphical representation of the mark disclosed a technical function and, in doing so, failed to consider relevant information which defined the technical function of the goods. The GC had further failed to analyse the relationship between that function and the characteristics of the shape. As a result, AG Szpunar concluded that the GC had failed to take sufficient account of the public interest underlying **Article 7(1)(e)**. The GC had also failed to follow the case law of the CJEU developed in *Philips Electronics* (C-299/99 reported in *CIPA Journal*, July 2002), *Lego Juris v OHIM* (C-48/09 reported in *CIPA Journal*, October 2010) and *Pi-Design* (C-337/12, reported in *CIPA Journal*, April 2014). AG Szpunar recommended that the GC's decision be set aside.

Gap's opposition to "The GapTravel Guide" successful

***Gap (ITM) Inc ("Gap") v British American Group Ltd ("BAGL")** (John Baldwin QC; [2016] EWHC 599 (Ch); 21.03.16)**

John Baldwin QC (sitting as a Deputy Judge) allowed Gap's appeal from a decision of the hearing officer to dismiss its opposition to BAGL's application to register "The GapTravel Guide" as a trade mark in respect of "magazine publishing" in Class 41.

Gap owned the well-known mark in the clothing field GAP. It owned an earlier EUTM for GAP in respect of a range of services in Class 41, and based its appeal on **Section 5(2)(b)**.

The Judge found that the hearing officer was mistaken to conclude that the average consumer would generally be a business and that the purchasing process may involve a relatively expensive procurement of one-off or ongoing services. As BAGL was carrying out the service of magazine publishing by producing and distributing magazines, and given the high degree of correspondence between the carrying out of that service and the magazines which were the end product of that service, the hearing officer's conclusion that a consumer of the product of such a service was not also a consumer of the service was too narrow a perspective and did not accord with practical commerce.

The Judge also found that the hearing officer had erred in finding no conceptual similarity between the marks. As the hearing officer had found that 'Gap' in BAGL's mark was allusive of "gap year" in the context of travel guide publishing, it had to be similarly allusive in Gap's mark when so used (on the basis of notional fair use of Gap's mark, which included travel guide publishing). The Judge concluded that there was therefore real conceptual similarity between the marks, and that he was entitled to consider the matter afresh. As travel guides were a common subject matter for magazine publishing services, the Judge found that there was a real risk of confusion on the part of the average consumer which the presence of the neologism or portmanteau 'GapTravel' in the graphic representation of BAGL's mark was not sufficient to remove. Gap's appeal was therefore allowed.

Court of Appeal finds series marks not incompatible with the Directive

***Comic Enterprises Ltd ("CEL") v Twentieth Century Fox Film Corporation ("Fox")** (Arden, Kitchin & Lloyd Jones LJJ; [2016] EWCA Civ 455 (Ch); 21.03.16)**

The CA (**Kitchin LJ** giving the lead judgment) dismissed the final outstanding point in Fox's appeal from the decision of **Roger Wyand QC** that it had infringed a series of trade marks registered by CEL. The outstanding point concerned the validity of CEL's series mark, as shown below (the first mark in the series claimed the colours red, black and white as an element of the mark):



The CA had already dismissed Fox's appeal (reported in *CIPA Journal*, March 2016), subject to this point.

The CA rejected Fox's argument that the registration was invalid because **Section 41**, under which it had been registered, was not compatible with EU law and the requirement that a mark must be a sign capable of being represented graphically (pursuant to **Articles 2 and 3** of the **Trade Mark Directive** and **Section 3(1)(a)**). The CA preferred the submissions of the Comptroller-General of Patents, Designs and Trade Marks that a series of trade marks was a bundle of individual marks, each of which had to comply with the requirements for protection set out in the Directive, and that **Section 41** was an administrative provision which fell outside the scope of the Directive. The CA did not, therefore, find it necessary to refer the question to the CJEU. It concluded that **Section 41** was not incompatible with the Directive and that the appeal should be dismissed.

Katharine Stephens, Hilary Atherton and Emma Green

Reporters' note: We are grateful to our colleagues at Bird & Bird LLP for their assistance with the preparation of this report: Ahalya Nambiar, Rebekah Sellars, George Khouri, Sara Nielsen, Georgie Hart, Toby Bond and Daisy Dier.

The reported cases marked * can be found at <http://www.bailii.org/databases.html#ew> and the CJ and GC decisions can be found at http://curia.europa.eu/jcms/jcms/j_6/home