

3rd INTERNATIONAL TRADE MARK CONFERENCE

**Alicante
26-27 October, 2000**

ABSOLUTE GROUNDS FOR REFUSAL (ARTICLE 7)

**Council Regulation 40/94
on the Community Trade Mark**

**LUIS-ALFONSO DURAN
DURAN-CORRETJER**

ABSOLUTE GROUNDS FOR REFUSAL (ARTICLE 7)

Council Regulation 40/94 on the Community Trade Mark

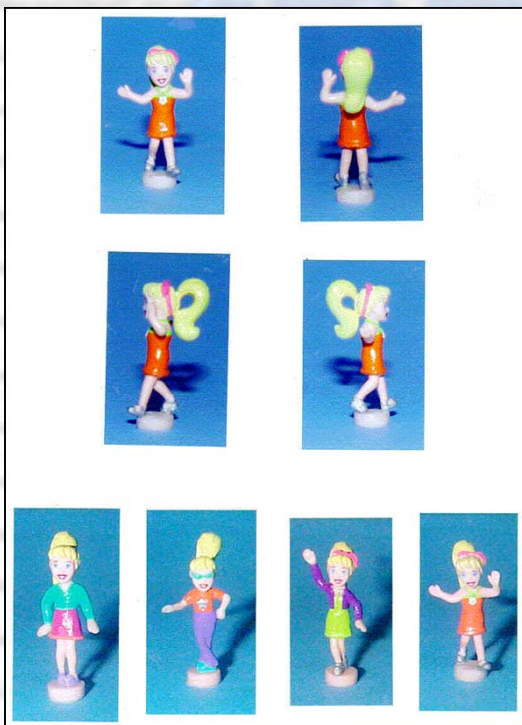
EXAMINATION DIVISION

ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.a)- (1)

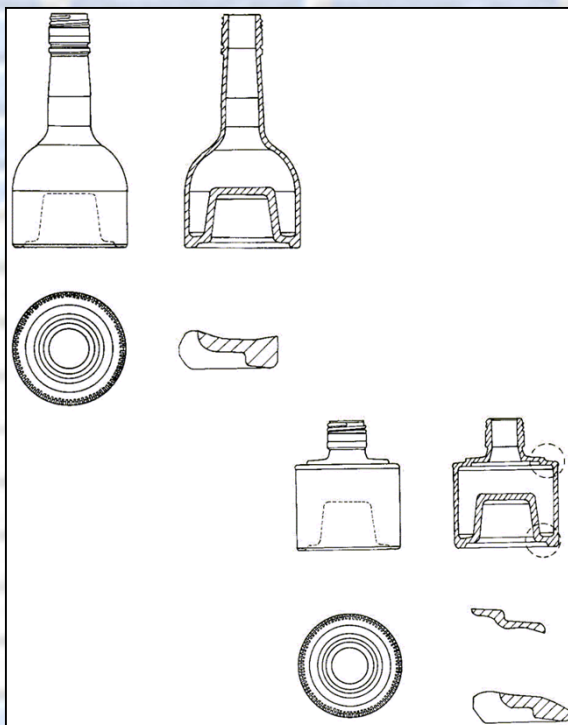
1. The following shall not be registered:

a) signs which do not conform to the requirements of Article 4;

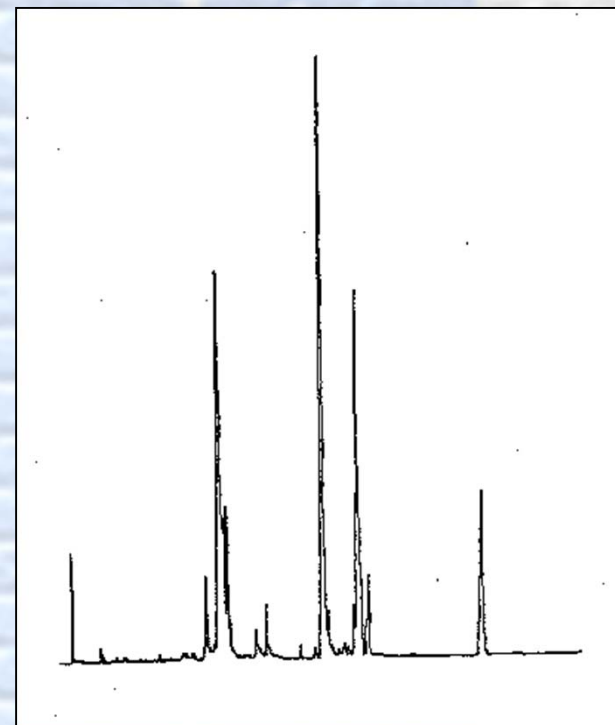
Trade Mark N° 1.223.569
Classes 16, 18, 25 and 28



Trade Mark N° 920.561
Classes 32 and 33



Trade Mark N° 566.596
Class 1



ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.b)- (2)

1. The following shall not be registered:

b) trade marks which are devoid of any distinctive character;

- | | |
|--|---|
| 1) A, cl. 29. | 9) CLEARPRINT, cl.16. |
| 2) ALL YOU NEED, cl. 3. | 10) COMPLETE, cl. 21, 9, 10, 16. |
| 3) ALWAYS IN FASHION, cl. 26. | 11) CYBERMEDIA, cl. 9, 16, 42.
CYBERNET, CYBERNOTARY... |
| 4) ANY WAY, cl. 35, 36, 38, 39, 42.
ANYFORM, cl. 9, 42.
ANYTHING, cl.18, 25.
ANYTIME, cl. 25. | 12) EURO 1.NET, cl. 9, 38, 42.
EURO 1, EURO 2004, EURO DETECTOR,
EURO PREMIUM LIFE.... |
| 5) BABY-CENTER (7.1.b), cl. 9, 16, 35, 42. | 13) EUROPEWIDE , cl. 36, 37, 42.
EUROPEAN COIN CLUB, cl. 14, 16, 35. |
| 6) BALANCE, cl. 5, 30, 32.
BALANCED HEALTH CARE, BALANCED
SCORECARD, BALANCING... | 14) FIRST QUALITY, cl. 5
FIRST EURO, cl. 36. |
| 7) BUYBOOKS.COM, cl. 35, 38, 41, 42.
BUYCARS.COM, BUYELECTRONICS.COM,
BUYFLOWERS.COM, BUYGAMES.COM, etc. | 15) GLOBAL INTERNET, cl. 9, 38, 42. |
| 8) CLASSIC, cl. 9, 10. | 16) INTERACTIVA , cl. 1, 5, 10. (7.1. b y c). |



ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.b)- (3)



- 17) **INTERNET TRADELINE**, cl. 9, 35, 36, 38, 42.
- 18) **INTRANET WORLD**, cl. 16, 25, 35, 38, 41, 42.
- 19) **MAKE SOMEONE HAPPY**, cl. 21.
- 20) **MAKING BUSINESS EASIER**, cl. 16, 34, 36, 39, 42.
- 21) **MAKING OUR EARTH MORE BEAUTIFUL**, 1, 5, 31, 42.
- 22) **MAXIMUM**, cl. 5.
- 23) **MEGA** (7.1.b y c), cl. 7, 12.
- 24) **MICROSAT**, cl. 9, 38.
- 25) **MORE THAN THE PACKAGE**, cl. 7, 9, 11, 16, 29, 30, 3.
- 26) **MULTI 2'N 1**, cl. 3, 7.
- 27) **OPTIMA**, cl.10, 36, 39, 41.
OPTIMUM, cl. 10.
- 28) **PERFECTFLAT**, cl. 9.

- 29) **POWER**, cl. 7, 8.
- 30) **PREMIUM MAGAZINE**, cl.16, 35, 41.
- 31) **QUICKBUSHING**, cl. 17.
- 32) **RAPID DATABASES**, cl. 9.
- 33) **SEE THE DIFFERENCE**, cl. 9.
- 34) **SIMPLY GUARANTEED**, cl. 38.
- 35) **SUPER 2**, cl. 29, 30, 32.
- 36) **TELEINTERNET**, cl. 38, 42.
- 37) **THE BEST BEER IN AMERICA**, cl. 32.
- 38) **THE BEST WAY TO PAY ON THE INTERNET**, cl. 9, 36, 38.
- 39) **THE ONE AND ONLY**, cl. 9.
THE ONE, cl. 9, 35, 38.
- 40) **THE ORIGINAL AND BEST**, cl. 30, (7.1.b y c).



ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.b)- (4)



41) THE WORLD'S BEST WAY TO PAY AND BE PAID, cl. 36.

42) **TOP**, cl. 11, (7.1.b y c). TOPBIKE, 12.

42) **TOP**, cl. 11, (7.1.b y c). TOPBIKE, 12

43) **ULTRA SPORT**, cl. 25.

44) **WEBLEARN**, cl. 9, 16, 41.

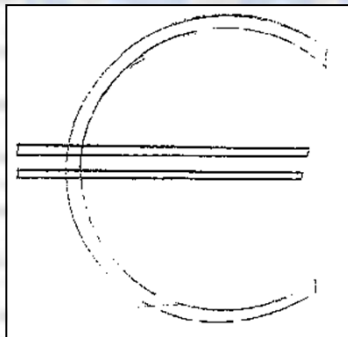
45) WHAT YOU NEVER THOUGHT POSSIBLE, 9, 38

46) **WORLD OF ART**, cl. 16.

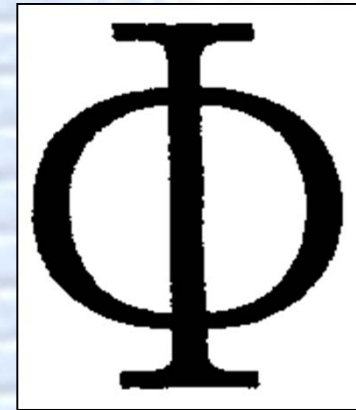
47) **WWWBANK** , cl.9, 42, (7.1.b y c)

48) **XTRA**, cl. 6, 12, 36, 39 (7.1.b y c)

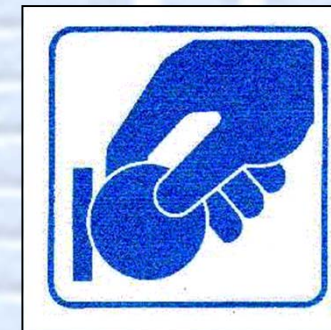
49) Trade Mark N° 1.156.363 class 35



50) Trade Mark N° 15.511, class 9



51) Trade Mark N° 98.913 class 39



ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.b)- (5)

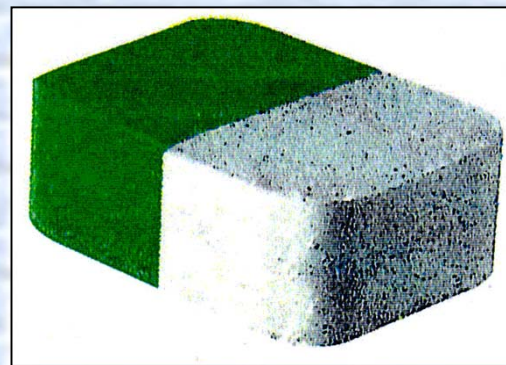


EXAMPLES OF 3D TRADE MARKS

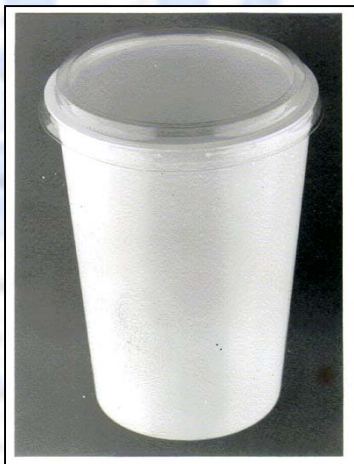
1) Trade Mark N° 1.003.086, class 29



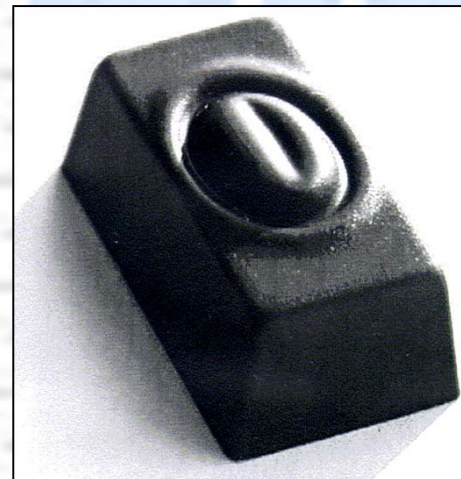
3) Trade Mark N° 1.043.165, class 3



2) Trade Mark N° 1.178.672, class 30



4) Trade Mark N° 1.059.609, class 30



ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.b)- (6)

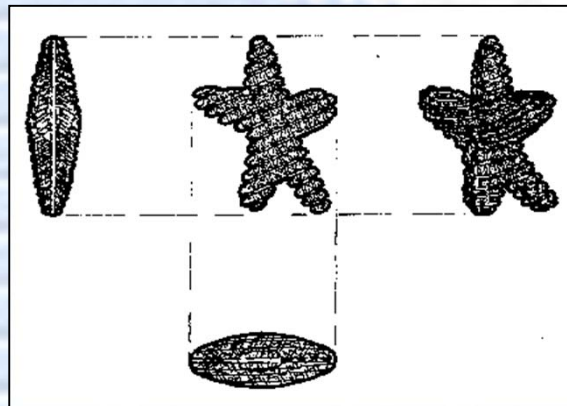


EXAMPLES OF 3D TRADE MARKS

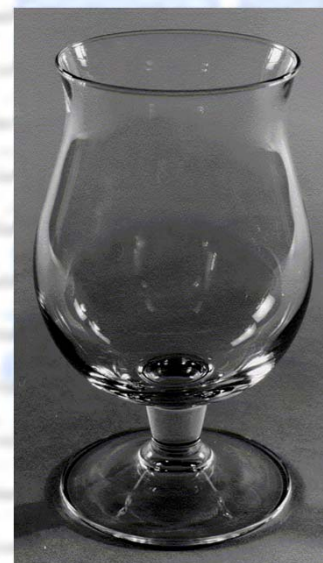
5) Trade Mark N° 287.482, class 32



6) Trade Mark N° 14.191, class 29 and 30



7) Trade Mark N° 47.597, classes 31 and 32



ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.c)- (7)

1. The following shall not be registered:

c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service;

- 1) 1,5
2,5
2, cl. 6, 7, 8, (7.1. b y c).
- 2) 24 HOUR FITNESS, cl. 18, 25, 41.
- 3) 2X9 DRIVE, cl. 12.
- 4) 3 DNS, cl. 9.
- 5) A+C+E, cl. 10.
- 6) ACTIVA, cl. 1, 3, (7.1.b y c).
ACTIVE CHANNEL, cl. 9.
- 7) ADVANCE, cl.12 (b y c).
ADVANCED MILK COMPLEX, cl. 3.
- 8) AMERICAN BEST, cl. 18, 25 (b y c).

- 9) AUTOBALANCE, cl. 1, 7, 9, 37, 42 (b y c).
AUTOANALYZER, cl. 1, 9.
- 10) BANKLOANNET, cl. 35, 36, 42.
- 11) BEST BUSINESS WORLDWIDE, cl.16, 35, 42 (b y c).
BEST DOCTORS, cl. 42.
- 12) BETTER PACK, cl. 7.
- 13) BIOCARE, cl. 1, 5 (b y c).
BIOCHEK, cl. 1.
- 14) BODY BRA, cl. 25 (b y c).
- 15) BUSINESSFIRST, cl. 39 (b y c).
- 16) CLEAR PORE STRIPS, cl. 3.



ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.c)- (8)



17) COLORIMAGE, cl. 9, (b y c).

18) CONTROL & CARE, cl. 3, (b y c).

19) DIGIFONE, cl. 9, 16, 38.

20) DUAL PERSONNEL LIFT, cl. 7.

21) E-STORE, cl. 38, 42.

22) EASI-CARD, cl. 9, 36, (b y c).

23) ECO PAPER, cl. 16, (b y c).

24) FIRST STEPS, cl. 41.

25) FOODSAVER, cl. 7.

26) FRESH, cl. 11, 37, 42.

27) GDI, cl. 12.

28) INFOBOLSA, cl. 36, 38.

29) LASTING COLOUR, cl. 3. LASTING
PERFORMANCE, cl. 3 (b y c).

30) MAXI DVD KIT, cl. 9.

31) MEGAROLLER, cl. 16.

32) MICRO-VITAMIN-K, cl. 3, 5.

33) MINIREADER, cl. 38.

34) MORE POWER, MORE LIFE, cl. 9.

35) MULTI-ACTIVE, cl. 3.

36) PERFECT CUT, cl. 9 (b y c).

37) POWERWASH, cl. 7.

38) QUICK CHANGE, cl. 7.

39) SECURE, cl. 3.

40) SIMPLE, FAIR AND INEXPENSIVE, cl. 38.

41) SUPER-PRECISION, cl. 7.

42) SUPREME, cl. 1, 9, 40, (b y c).

43) TELEBINGO, cl. 28, 36, 41, (b y c).

44) TOP CARE, cl. 3 (b y c). TOPTOOLS, cl. 9, 16, 42 (b y c)

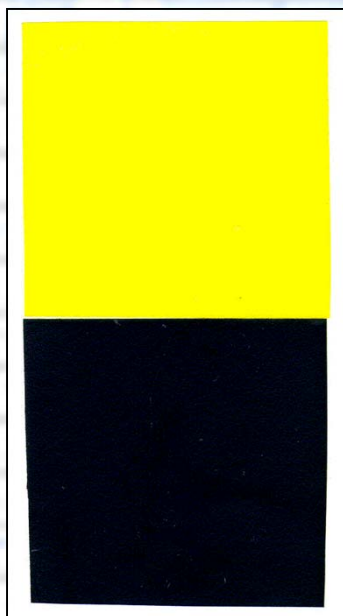
45) ULTRACLEAN, cl. 34 (b y c).



ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.c)- (9)

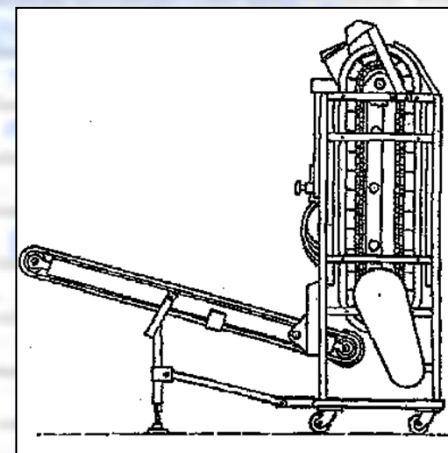


46) Trade Mark N° 1.000.132, class 4

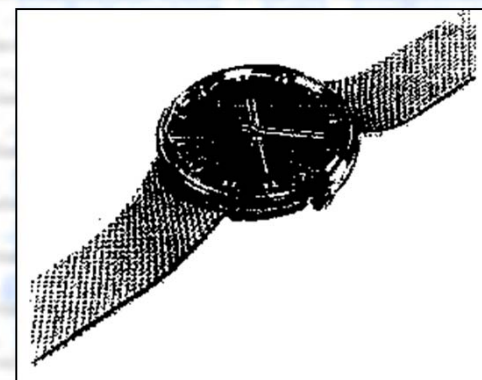


EXAMPLES OF 3D TRADE MARKS

1) Trade Mark N° 593.921, class 7



2) Trade Mark N° 103.317, class 14

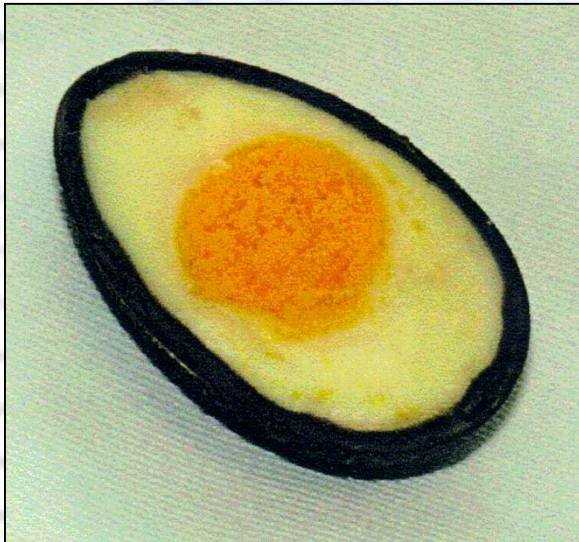




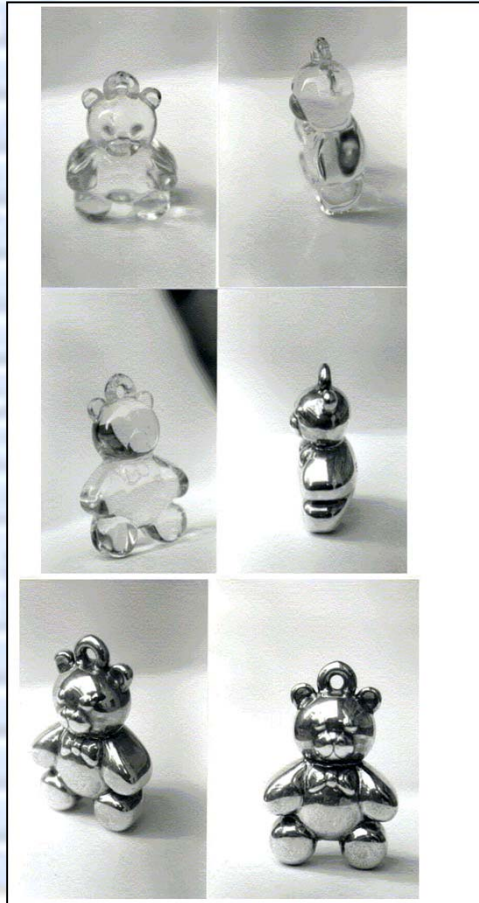
ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.c)- (10)

EXAMPLES OF 3D TRADE MARKS

3) Trade Mark N° 1.059.526,
class 30



4) Trade Mark N° 1.130.392,
classes 14,18 and 25



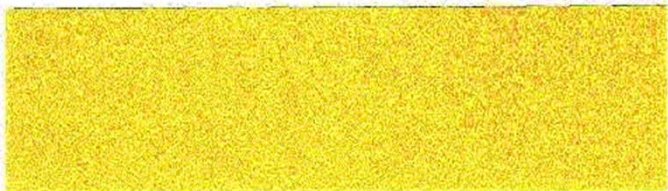
5) Trade Mark N° 395.913,
class 7



ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.d)- (11)

1. The following shall not be registered:

d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade;

- | | |
|--|---|
| 1) CA125, cl. 1, 5, 9, 10 (7.1.b y d). | 11) VOICE MAIL, cl. 9, 38, (b, c, d). |
| 2) CA15-3. Cl. 1, 5, 9, 11 (7.1.b y d). | 12) YELLOW PAGES, cl. 9, 16, 35, 38 (c, d). |
| 3) CA 19-9. Cl. 1, 5, 9, 10 (7.1.b y d). | 13) Trade Mark N° 51.607, classes 3, 5 and 30 |
| 4) CAFE-SANDWICH, cl. 29, 30, 42 (b, c, d). |  |
| 5) CAMBRIDGE ENERGY
RESEARCH, cl. 35, 41, 42 (b, c, d). | |
| 6) E-TAILER, cl. 35, 38, 39. | 14) Trade Mark N° 52.035, classes 3, 5 and 30 |
| 7) LISTAS AMARELAS, cl. 16, 35 (b, c, d). |  |
| 8) PREMIUM, cl. 29, 42 (b, d, 7.2). | |
| 9) SAT.2 . Cl. 3, 9, 14, 16, 18, 20, 2 (b, d). | |
| 10) THE EXPRESS, cl. 16 (b, c, d). | |

ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.e)- (12)

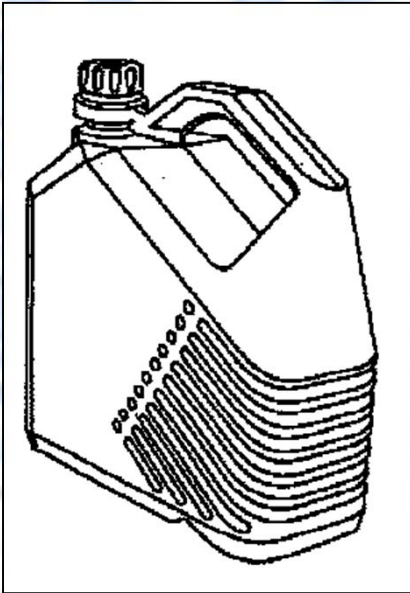
1. The following shall not be registered:

e) signs which consist exclusively of:

i) the shape which results from the nature of the goods themselves; or

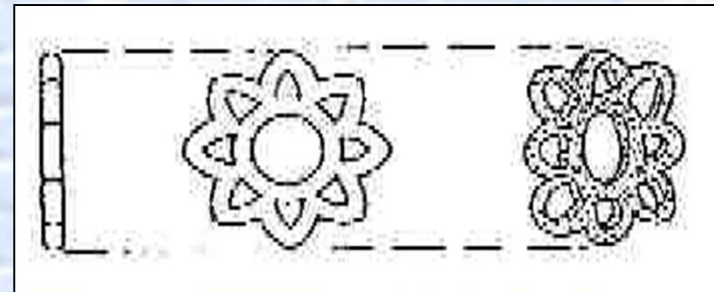
REJECTED

1) Trade Mark N° 138.636, classes 1 and 4



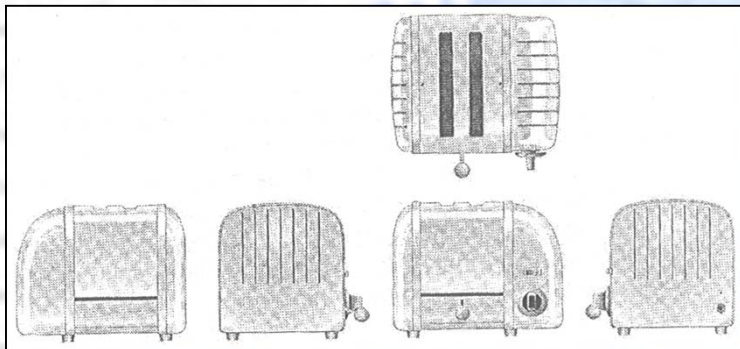
ACCEPTED

1) Trade Mark N° 14.217, classes 29 and 30

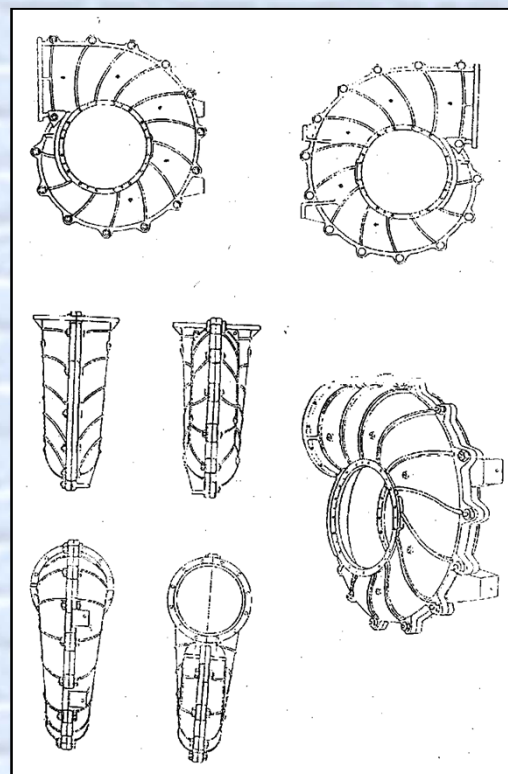


ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.e)- (13)

2) Trade Mark N° 48.728, class 11



3) Trade Mark N° 151.456, class 7

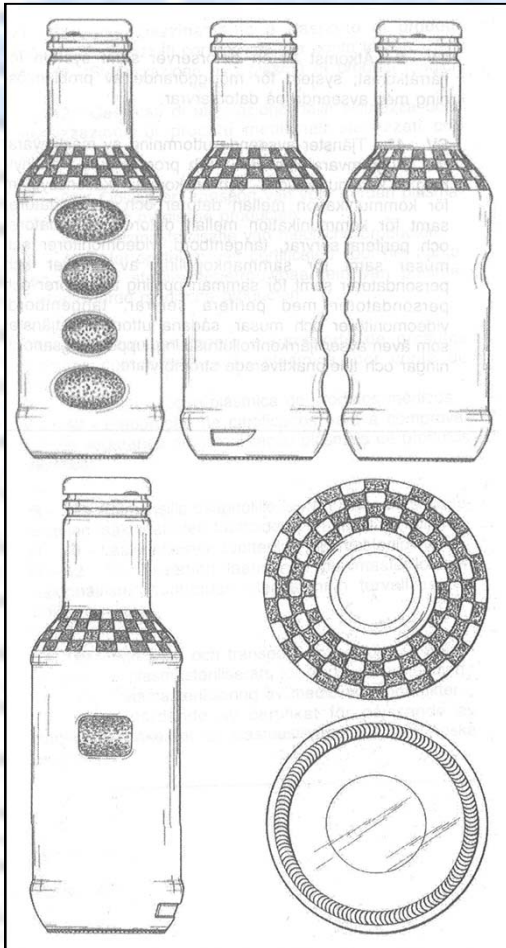


4) Trade Mark N° 428.342, class 3



ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.e)- (14)

5) Trade Mark N° 1.286.210, class 32



6) Trade Mark N° 1.294.321, classes 21, 32 and 33



ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.e)- (15)

1. The following shall not be registered:

e) signs which consist exclusively of:

ii) the shape which results from the nature of the goods themselves; or

Trade Mark N° 861.658,
class 22



ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.e)- (16)

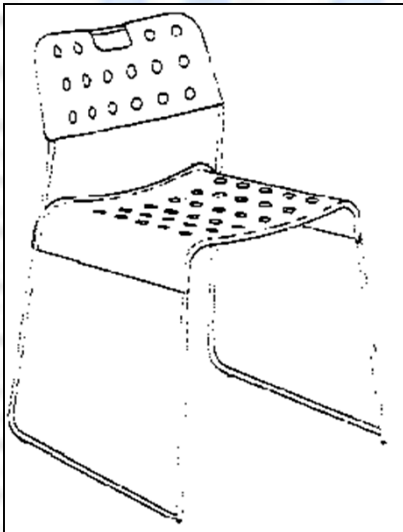
1. The following shall not be registered:

e) signs which consist exclusively of:

iii) the shape which gives substantial value to the goods;

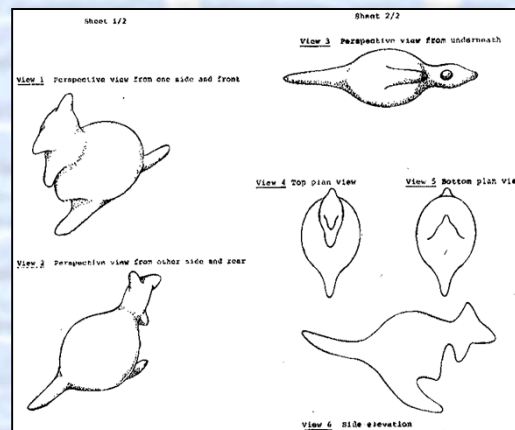
REJECTED

1) Trade Mark N° 1.334.044, class 20

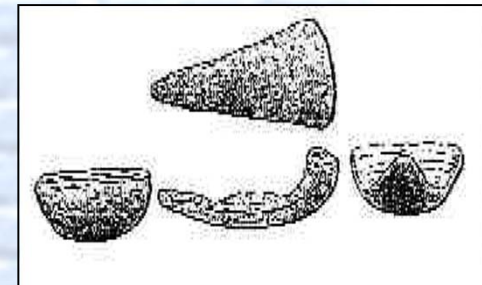


ACCEPTED

1) Trade Mark N° 13.342,
classes 29, 30 and 31



2) Trade Mark N° 14.167,
classes 29 and 30



3) Trade Mark N° 85.715,

TOMORROW I STOP SMOKING

ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.f)- (17)

1. The following shall not be registered:

f) trade marks which are contrary to public policy or to accepted principles of morality;

1) BALLE, CL. 33.

2) BOLLOX, cl. 28.

3) JOHANNES PAUL II, cl. 32, 33, 34.

ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.g)- (18)

1. The following shall not be registered:

g) trade marks which are of such a nature as to deceive the public, for instance as to the nature, quality, or geographical origin of the goods or service;

1) ACER, cl. 1, 5, 31 (b y g).

2) CURICUIR, cl. 18, 24, 25.

3) ECSTASY, cl. 5.

4) FLAVORCOFFEE, cl. 21, 30, 42 (b, c, g).

5) GREEN T, cl. 25, 30, 32, 33 (c, g).

6) HABANO PRIMERO, cl. 34 (b, c, g).

7) KALIMOTXO, cl. 32, 33 (b, c, g).

8) LEM BRUSCO, cl. 32, 33.

9) MUSEUM-STORE, cl. 3, 14, 16, 18, 25 (c, g).

10) OLIO D'OLIVA INTEGRALE, cl. 29 (b, c, g).

11) ONLYGLASS, cl. 19, 21, 39, (b, c, g).

ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.h)- (19)

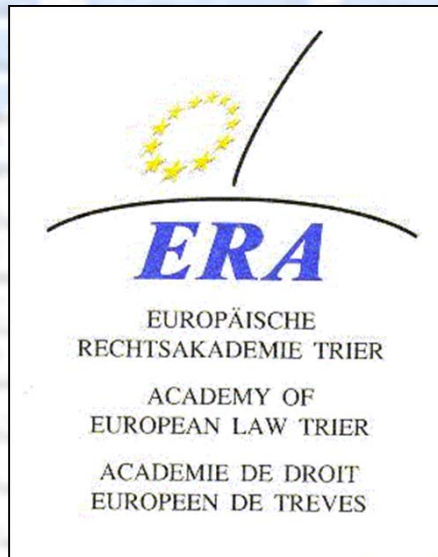
1. The following shall not be registered:

h) trade marks which have not been authorized by the competent authorities and are to be refused pursuant to Article 6ter of the Paris Convention;

1) Trade Mark N° 311.555,
class 7



2) Trade Mark N° 18.622,
classes 16, 41



3) Trade Mark N° 1.032.226,
classes 9, 14, 16, 18, 25, 28



ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.i)- (20)

1. The following shall not be registered:

i) trade marks which include badges, emblems or escutcheons other than those covered by Article 6ter of the Paris Convention and which are of particular public interest, unless the consent of the appropriate authorities to their registration has been given.

1) Trade Mark N° 1.014.117,
classes 9, 35, 36, 37, 38, and 39



2) Trade Mark N° 462.275,
classes 35, 36, 38 and 41



3) Trade Mark N° 1.092.576,
classes 3, and 25



ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.i)- (21)

1. The following shall not be registered:

j) trade marks for wines which contain or consist of a geographical indication identifying wines or for spirits which contain or consist of a geographical indication identifying spirits with respect to such wines or spirits not having that origin.

1) JEREZ, cl. 30, 32, 33 (b, c, j).

2) LA MAISON DES BEAUJOLAIS
cl. 31, 33, 41, 42 (b, c, j).

3) Trade Mark N° 925.016, cl. 29, 33, 40



ABSOLUTE GROUNDS FOR REFUSAL -ARTICLE 7 (1.i)- (22)

1. The following shall not be registered:

j) trade marks for wines which contain or consist of a geographical indication identifying wines or for spirits which contain or consist of a geographical indication identifying spirits with respect to such wines or spirits not having that origin.

4) Trade Mark N° 962.357, cl. 32, 33



5) Trade Mark N° 997.304, cl. 32, 33



ABSOLUTE GROUNDS FOR REFUSAL (ARTICLE 7)

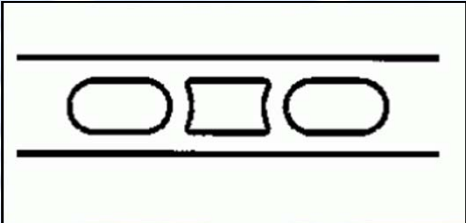
Council Regulation 40/94 on the Community Trade Mark

DECISIONS OF BOARDS OF APPEALS

DECISIONS OF BOARDS OF APPEALS

ART. 7 (1) /b /c

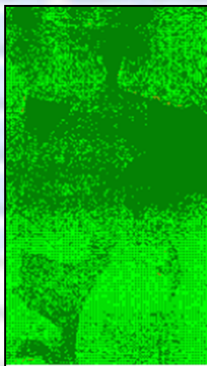
ACCEPTED

<u>CASE</u>	<u>MARK</u>	<u>CLASSES</u>
305/99	PROLINE	18, 25
659/99	RADIOMETER	1, 9, 10
145/99	Profilati 	6, 17, 19
735/99	READY-TO-GO	1, 5
689/99	UNLOCK THE POTENTIAL	9, 16, 42
32/2000	TOP-LOK	20
698/99	FIXIT	19
388/99	CoreService	36
125/99	CAREINSURE	36

DECISIONS OF BOARDS OF APPEALS

ART. 7 (1) /b /c

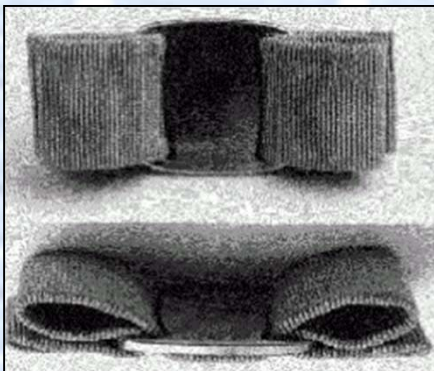
ACCEPTED

<u>CASE</u>	<u>MARK</u>	<u>CLASSES</u>
346/99	Light and dark green 	12
533/99	BIDWATCH	35, 38, 42
200/99	LINE	5, 29, 30, 32, 42
177/99	3D mark 	17

DECISIONS OF BOARDS OF APPEALS

ART. 7 (1) /b /c

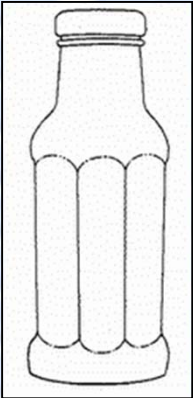
ACCEPTED

<u>CASE</u>	<u>MARK</u>	<u>CLASSES</u>
645/99	GLOBAL CARE	7, 8, 10, 12, 21, 27
391/99	Kiss device	30
254/99	3D mark	
		
		14, 18, 25
367/99	GERMANSAT	38
460/99	RAPID	7, 42
275/99	LITE	42

DECISIONS OF BOARDS OF APPEALS

ART. 7 (1) /b /c

DISMISSED

<u>CASE</u>	<u>MARK</u>	<u>CLASSES</u>
486/99 488/99	LABOTECH 3D bottle 	9, 10 30
312/99	SAT.2	38, 41, 42
189/99	SECUREBUY	9, 35, 36, 42
558/99	Green/grey	7

DECISIONS OF BOARDS OF APPEALS

ART. 7 (1) /b /c

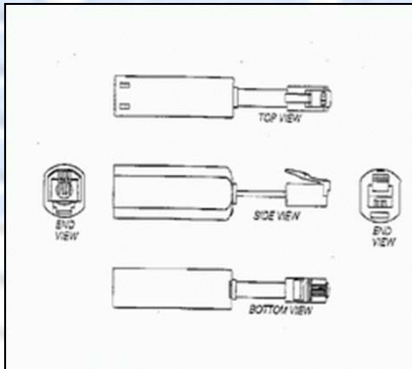
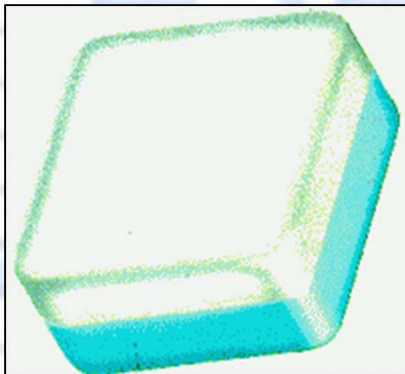
DISMISSED

<u>CASE</u>	<u>MARK</u>	<u>CLASSES</u>
190/99	euro 	35, 36
12/2000	MAINCONTROL	9, 35, 42
873/99	OPTIFORMA	16
500/99	QUICKFIX	9
4/99	OBERON	9
36/99	MAXSPEED	9, 16, 42
47/99	EVER FRESH	16, 21, 31
783/99	VELOCITY	12, 37

DECISIONS OF BOARDS OF APPEALS

ART. 7 (1) /b /c

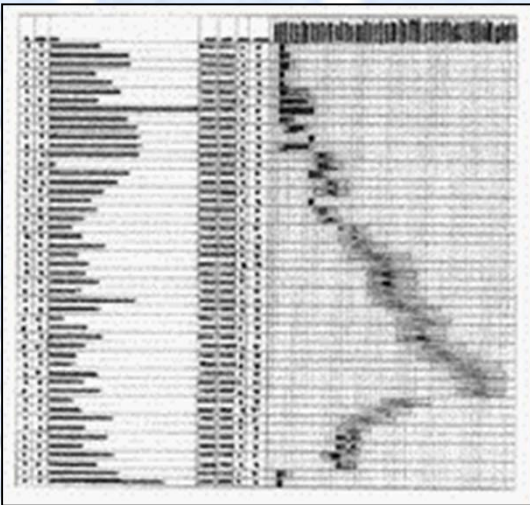
DISMISSED

<u>CASE</u>	<u>MARK</u>	<u>CLASSES</u>
179/99	3D 	9
511/99	3D 	3

DECISIONS OF BOARDS OF APPEALS

ART. 7 (1) /d

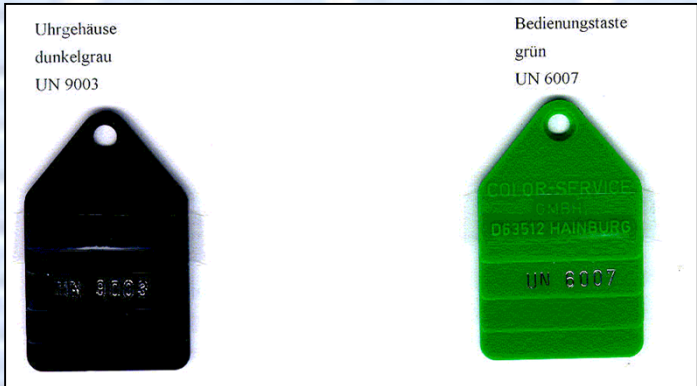
ACCEPTED

<u>CASE</u>	<u>MARK</u>	<u>CLASSES</u>
555/99 535/99	PRIMO Fig.	29
		35, 42

DECISIONS OF BOARDS OF APPEALS

ART. 7 (1) /d

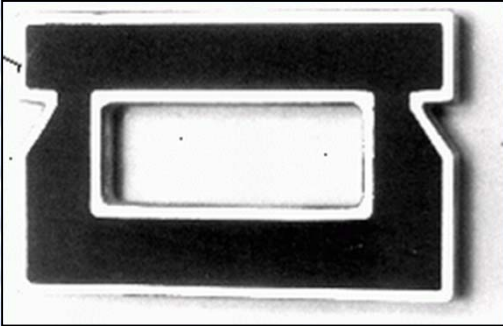
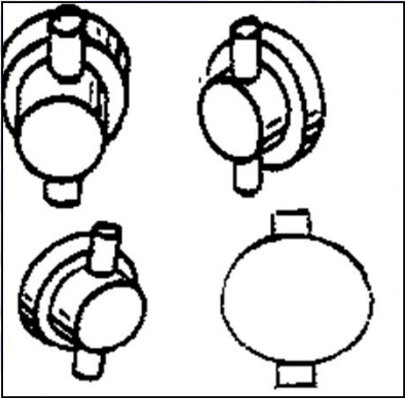
DISMISSED

<u>CASE</u>	<u>MARK</u>	<u>CLASSES</u>
210/99	colour 	14
620/99	PREMIX	1

DECISIONS OF BOARDS OF APPEALS

ART. 7 (1) /e (i, ii, iii)

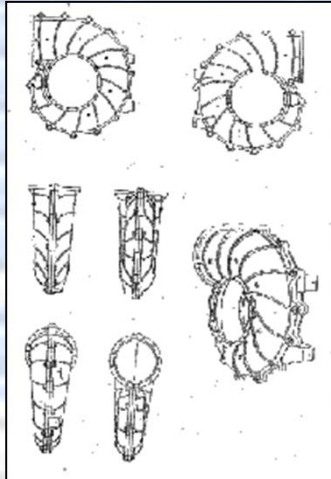
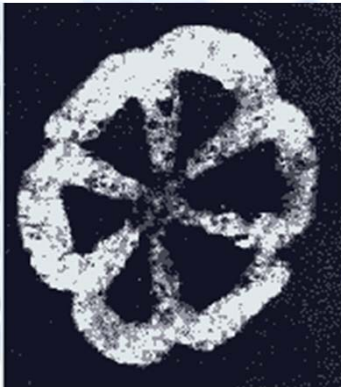
ACCEPTED

<u>CASE</u>	<u>MARK</u>	<u>CLASSES</u>
395/99	3D mark 	14, 18, 25
202/99	3D mark 	15

DECISIONS OF BOARDS OF APPEALS

ART. 7 (1) /e (i, ii, iii)

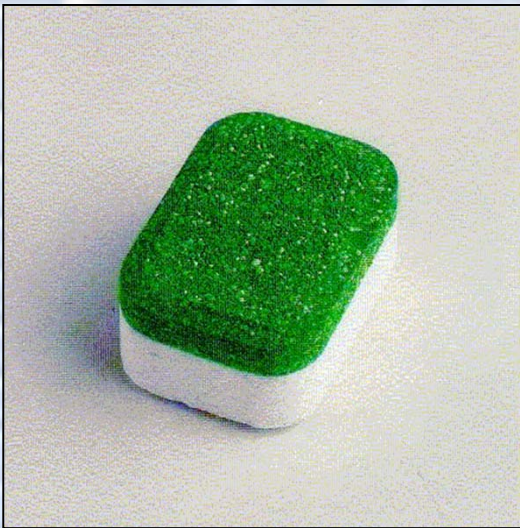
ACCEPTED

<u>CASE</u>	<u>MARK</u>	<u>CLASSES</u>
82/99	3D mark 	7
467/99	3D mark 	9, 30

DECISIONS OF BOARDS OF APPEALS

ART. 7 (1) /e (i, ii, iii)

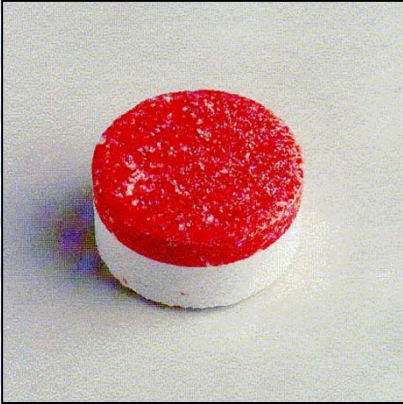
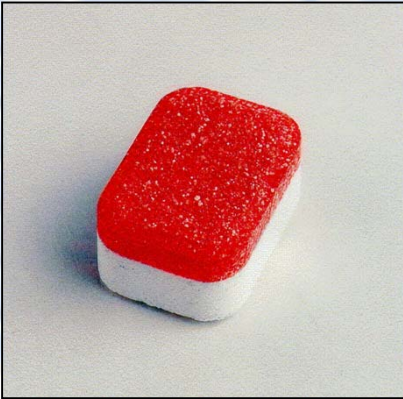
DISMISSED

<u>CASE</u>	<u>MARK</u>	<u>CLASSES</u>
246/99 71/99	ARCADIA 3D mark	33
		3

DECISIONS OF BOARDS OF APPEALS

ART. 7 (1) /e (i, ii, iii)

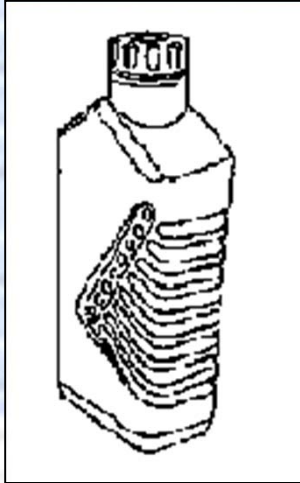
DISMISSED

<u>CASE</u>	<u>MARK</u>	<u>CLASSES</u>
73/99	3D mark 	3
70/99		3

DECISIONS OF BOARDS OF APPEALS

ART. 7 (1) /e (i, ii, iii)

DISMISSED

<u>CASE</u>	<u>MARK</u>	<u>CLASSES</u>
55/98	3D mark	
		1, 4
60/98		1, 4

ABSOLUTE GROUNDS FOR REFUSAL (ARTICLE 7)

Council Regulation 40/94 on the Community Trade Mark

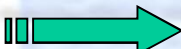
DECISIONS OF EUROPEAN COURT OF JUSTICE

BABY-DRY (T-163/98)
CLASSES 16, 25 (DIAPERS)

FACTS

- a) REJECTION (ART. 7(1) (b) & (c)) INDICATION OF EXPECTED RESULT USING DIAPERS.
- b) BOA REJECTED APPLICANT'S ARGUMENTS ON ACQUIRED DISTINCT. (ART. 13) NOT RAISED AT EXM.

DECISION

- a) DISTINCTIVE CHARACTER
INFRINGEMENT OF ARTICLE 7(1) (b) & (c) :
THE SIGN IS SIMPLY A DIRECT AND NECESSARY INDICATION OF THE INTENDED PURPOSE OF THE GOODS (DIAPERS)  KEEP BABIES DRY.
- b) EVIDENCE OF ACQUIRED DISTINCTIVENESS ARTICLE 7(3)
BOA INFRINGED ARTICLE 62 BY REFUSING TO
EXAMINE THE APPLICANT'S ARGUMENTS BASED ON ARTICLE 7(3).
CONTINUITY IN TERMS OF THEIR FUNCTIONS BETWEEN EXAMINER AND BOA.

CONCLUSION: CONTESTED DECISION ANNULLED

COMPANYLINE (T-19/99)
CLASS 36 (INSURANCE & FINANCIAL SERVICES)

ARGUMENTS APPLICANT

- ART. 7(1) /b : MINIMUM DEGREE DISTINCTIVITY SUFFICIENTLY DESCRIPTIVE.
- WORD TO BE CONSIDERED AS A WHOLE NOT BY COMPONENTS.
- COMBINATION NOT USED FOR SERVICES.

REASONS DECISION

- DISTINCTIVITY ASSESSED IN RELATION TO SERVICES.
- SIGN FORMED {
COMPANY: SERVICES FOR COMPANIES
LINE : BRANCH/GROUP OF SERVICES LINE OF
SERVICES FOR UNDERTAKINGS.
- COUPLING 2 DESCRIPTIVE WORDS WITHOUT {
GRAPHIC
SEMANTIC } AMENDMENT
- THERE IS NO NEED THAT WORD APPEARS IN DICTIONARIES.
- NOT ILLEGIBLE IN ENGLISH-SPEAKING COUNTRIES (A. 7(2)).
- SUFFICIENT FOR REJECTION 1 ABSOLUTE GROUND.

CONCLUSION: **APPEAL DISMISSED - CTM REJECTED**

OPTIONS (T-91/99)

CLASS 36 (INSURANCE, WARRANTY, FINANCING, ETC.)

ARGUMENTS APPLICANT

- REJECTION A. 7(1 /b, /c) IN ENGLISH + FRENCH.

- APPLICANT PROVES ACQUIRED DISTINCTIVITY

-IN { BE
UK
DK, NL, PT, SE

-BUT NOT FR

- SUFFICIENT TO PROVE IT IN SUBSTANTIAL PART COMMUNITY.

REASONS DECISION

- PREAMBLE : UNITARY CHARACTER OF CTM.

- 7.2 ABSOLUTE GROUNDS ONLY IN PART UE.

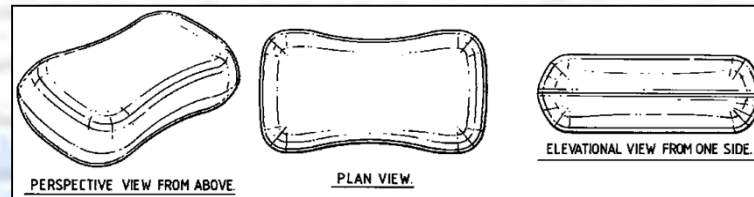
- 7.3 DISTINCTIVITY MUST BE SHOWN IN THE SUBSTANTIAL PART OF UE WHERE IT IS DEVOID OF DIST. CHAR.

- FR IS A SUBST. PART OF UE WHERE MARK IS UNREGISTERED.

CONCLUSION: APPEAL DISMISSED - CTM REJECTED

SOAP BAR SHAPE (T-122/99)

CLASS 3 (SOAPS)



BOA (3) DECISION

- IT IS NOT POSSIBLE TO CHANGE FROM FIGURATIVE TO 3D AFTER FILING

- REJECTION GROUNDED { (1) 7(1)/e(i) : SHAPE RESULTS FROM NATURE GOOD
(2) 7(1)/b : DEVOID OF DISTINCTIVE CHARACTER
(3) 7(1)/e(ii) : TECHNICAL RESULT } NOT RAISED BY EXAMINER

- REGISTRATION IN MEMBER STATES NOT BIND OHIM.

REASONS DECISION

- BOA NOT TO RE-OPEN EXAM. NEW ABS GROUNDS (2-3)

- INFRINGEMENT OF RIGHT OF DEFENSE (NO OPP. TO REPLY)

- 7(1)/e(i) DOES NOT APPLY { SHAPE BENDS INWARDS
GROOVES } OTHER SHAPES WITHOUT THESE FEATURES

- REGISTER MEMBER STATES CONSIDERED BUT NOT DECISIVE WEIGHT

CONCLUSION: DECISION ANNULLED. CTM GRANTED

DECISIONS OF CANCELATION DIVISION

INVALIDATION

<u>CTM</u>	<u>MARK</u>	<u>CLASSES</u>
312.736	POP UP	16
835.728	POUDRE LIBRE NATURELLE	3
90.134	BSS	5 (balanced salt solution)

DECISIONS OF CANCELATION DIVISION

NO INVALIDATION

<u>CTM</u>	<u>MARK</u>	<u>CLASSES</u>
90.019	KING (design)	16 (playing cards)
53.447	TRILLIUM	9 (bona fide intention to use)
627.851	PROTEOMICS	9, 10, 35, 42 (study of proteines encoded by the genome)
225.250	TEEKAMPAGNE	30 (tea)