

Resumé

Protection of Three-Dimensional Trade Marks and Designs

The aim of this work was to examine the registration requirements of three-dimensional trade marks and designs, to compare the rights and protection conferred by each of these forms of intellectual property and to observe the interaction of trade mark and design when their subject matter is identical or similar.

First part of this work focuses on the questions regarding the registration requirements of the three-dimensional trade marks. The work looks closely on what constitutes a sign and which absolute grounds for refusal of registration are mostly employed when dealing with the three-dimensional trade marks. Furthermore this work looks at exclusion of registration of certain types of shapes, on the requirement of good faith when applying for trade mark registration and briefly at the average consumer. The landmark cases cited in this part of the work are *Dyson v Registrar of Trade Marks*, *Philips v Remington*, *Henkel v OHIM*, *Lego v OHIM* and *Lindt v Franz Hauswirth*.

Second part of this work looks at the definition of design and its relationship to product itself. It also looks at the background of design protection and closely at the registration requirements of designs, namely the novelty requirement, the individual character and exclusion of functional designs. The main subcategories of individual character discussed in this work are what is overall impression, who is informed user and what is the relevance of the freedom of designer. The must fit and must match elements that are not part of the overall impression are examined briefly at the end of this part. The landmark cases cited in this part are *Crocs v Holey Soles*, *Procter & Gamble v Reckitt Benckiser*, *Grupo Promer Mon Graphic v OHIM* and *Landor & Hawa International v Azure Designs*.

Third and final part of this work tries to compare the three-dimensional trade marks and designs and discusses the overlap of their protection. The assessment of three-dimensional trade marks and designs is based on the comparison of their primary functions, the exclusion of technical function in both cases, comparison of the average consumer and the informed user and finally comparison of the individual character of design and the similarity of a trade mark. Overlap of protection provided by the three-dimensional trade marks and designs is illustrated by two cases, in which rights conferred by older trade mark

clash with rights conferred by a design. The landmark cases cited in this part of the work are Philips v Remington, Whirlpool v Kenwood, Procter & Gamble v Reckitt Benckiser, Kraft v Cocachoc, 7 As 53/2008-158 and Beifa Group v OHIM.