



Decisions of the Trimester

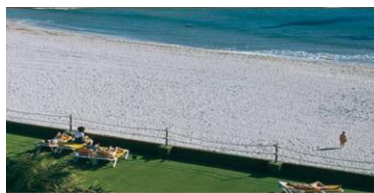
September - December 2015

Christoph Bartos – Member of the Boards of Appeal
15 December 2015

Alicante



OFFICE FOR HARMONIZATION
IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)



BEAUTIFUL, MEDITERRANEAN, UNIQUE

City of Business

4th province of Spain /

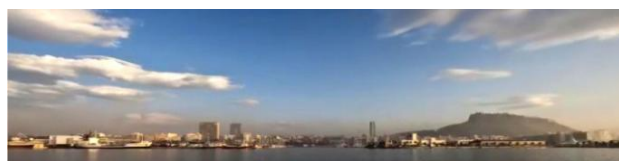
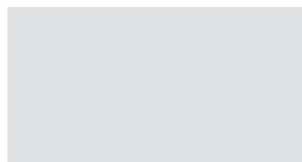
€35.000 Million in 2011 /

129.728 Companies

With the 4th largest GDP /

SMEs 96.1% /

Exports € 3.500 Million/year



City of OHIM

OHIM – Agency of the EU / 100 000 CTMs and 80 000 RCDs/year / The EU Observatory on Infringements of IP rights

Employees from 28 EU Members States / 1000 IP Professionals working ...

For you



The Menu

Absolute grounds of refusal

- A play with colours, positions and figures
- Bad faith

Relative grounds of refusal

- Likelihood of confusion

Just another figure



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(TRADE MARKS AND DESIGNS)

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ABSOLUTE GROUNDS OF REFUSAL

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Colour

R1206/2014-4 Violet (RAL 4003)

CTM applied for

- 
- Cl. 6
 - Metal chains and accessories

R1206/2014-4 Violet (RAL 4003)

Board of Appeal

- colour is non distinctive even if use cannot be established with respect to the relevant g&s
- Evidence submitted proves distinctive character acquired through use

Result

- Contested decision **annulled**
- CTM applied for **published with code '521'**



R0597/2015-2 6 COLOURED PIN

CTM



- Cl. 7
 - Wind energy converter

Remark:

R0260/2011-1 → T-0245/12 → C0035/14P

R0597/2015 6 COLOURED PIN

Board of Appeal

- Colour mark with different shades of green in specific form
- green conveys a message – nature

Result

- Contested decision **confirmed**
- CTM **cancelled**

R2845/2014-1 THREE VERTICAL STRIPES

CTM applied for



-
- Cl. 18, 25, 26
 - **T-612/15**

R2845/2014-1 THREE VERTICAL STRIPES

Board of Appeal

- Simple geographic shape
- Colours do not convey any message
 - Ensure only visibility
 - Functional and decorative purpose

Result

- Contested decision **confirmed**
- CTM applied for **rejected**

Remark: pending before GC as T-612/15

R0286/2015-5 TEN VERTICAL STRIPES

Board of Appeal

- No need that sign is creative or fancy
- Refers to paper products in different colours
- Label in rectangular, coloured form

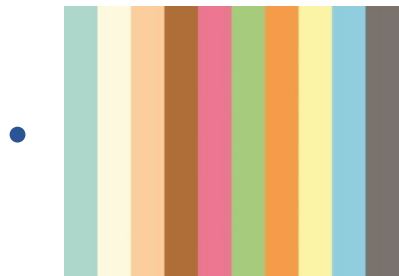
Result

- Contested decision **confirmed**
- CTM applied for **rejected**



R0286/2015-5 TEN VERTICAL STRIPES


CTM applied for



- Cl. 16, 35

R2745/2014-1 5 DOTS

CTM applied for

- 
- Cl. 39, 43
 - Transport and travel agency services; reservation and booking of temporary lodging

R2745/2014-1 5 DOTS



Board of Appeal

- Basic shape, basic colours
- Do not convey any message

Result

- Contested decision **confirmed**
- CTM applied for **rejected**



Position and other similar effects

R0448/2015-1 3 LINES AND A SMALL BOW

CTM applied for



- Cl. 25
– trousers

R0448/2015-1 3 LINES AND A SMALL BOW

CTM applied for

- Bow is small and not recognizable from distance
- No need that sign is creative or fancy
- Consumers are used to decorative elements

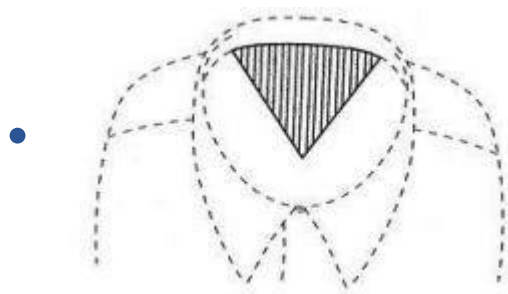
Result

- Contested decision **confirmed**
- CTM applied for **rejected**



R0211/2015-2 TWO OVERLAPPING TRIANGLES

CTM applied for



the trade mark consists of a striped 'V'- shaped insert fastened to the neck and collar part of the goods. The vertical uninterrupted lines within the triangle positioned drawing are a feature of the mark and are not meant to indicate a colour.

- Cl. 25
– clothing

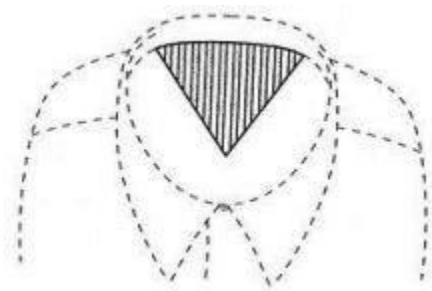
R0211/2015-2 TWO OVERLAPPING TRIANGLES

Board of Appeal

- Basic shapes commonly used
- Not necessary that shape has a direct meaning

Result

- Contested decision **confirmed**
- CTM applied for **rejected**



R1700/2015-4 SITZMÖBEL

CTM applied for



Die Positionsmarke betrifft die Kennzeichnung eines Sitzmöbels, das an seinem Fußteil verteilt eine Vielzahl von schwarzen Bodenrollen aufweist, wobei eine einzige der Bodenrollen auf einer seiner beiden schwarzen Seitenflächen mittig einen roten, runden Kennzeichnungsbereich aufweist, der 75% der einen Seitenfläche dieser einen Bodenrolle bedeckt, so dass ein schwarzer Außenrand mit 25% der Seitenfläche um den Kennzeichnungsbereich gebildet ist. Die Farbe Rot ist "RAL3020".

- Cl. 20
 - Furniture, especially seating furniture

R1700/2015-4 SITZMÖBEL

Board of Appeal

- Basic colour
- Position refers only to one of the legs
 - Only one of many shapes of a leg

Result

- Contested decision **confirmed**
- CTM applied for **rejected**



CTM applied for



Remark [not part of the application]:

The sign represents in Braille the German term GLÜCK
(in English: Luck)

- Cl. 9, 14, 16, 18, 21, 25, 35, 36, 41
 - Furniture, especially seating furniture

R0883/2015-4 DOTS



Board of Appeal

- General consumer cannot read Braille
- General consumer will see an indication addressed to a visually impaired person
- No need that the term is also descriptive

Result

- Contested decision **confirmed**
- CTM applied for **rejected**



Figurative

R3117/2014-1 5 TOOLS

CTM applied for



- Cl. 7, 8, 40

R3117/2014-1 5 TOOLS

Board of Appeal

- 5 pictograms
- Direct link

Result

- Contested decision **confirmed**
- CTM applied for **rejected**



Tip of a drill



Tip of a tap drill



Octahedron



Tip of a reamer



Tip of a milling cutter

R3299/2014-1 FLOWER

CTM applied for



- Cl. 9, 14, 16, 18, 20, 25, 26, 35, 42

R3299/2014-1 FLOWER


Board of Appeal

- Link between flower and list of g&s?
 - Cl. 26, 35 & 42 Artificial flowers, retailing of artificial flowers, designing of artificial flowers
 - All other g&s

Result

- Contested decision partly **confirmed**
- CTM applied for partly **rejected**

CTM applied for

- 
- Cl. 9
 - Computer software for contact information management sold as a feature

R2934/2014-5 A B C D

Board of Appeal

- Typical pictogram
- Index tabs, silhouette, letters and colours
- Distinctive character acquired through use
 - Distributed with IOS 7+
 - No recognition of pictogram

Result

- Contested decision entirely **confirmed**
- CTM applied for entirely **rejected**





Bad Faith

R0879/2013-2 HISPANO SUIZA



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CTM

- HISPANO SUIZA

- Cl. 12, 14 & 25



R0879/2013-2 HISPANO SUIZA

Board of Appeal

- ‘Hispano Suiza’ was a famous car manufacture
 - Still some surviving reputation
- CTM proprietor cancelled ES trade marks (non-use), but not FR trade marks

Result

- Bad faith existed
- Contested decision **annulled**
- CTM **cancelled**



RELATIVE GROUNDS OF REFUSAL



Likelihood of confusion

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R1789/2014-2 two stripes/geometric shapes

CTM applied for



- Cl. 25

Earlier trade mark (CTM *et al.*)



- Cl. 25

R1789/2014-2 two stripes/geometric shapes



Board of Appeal

- Earlier sign is not only 'stripes'
- Significant visual differences
- Distinctive character *per se* of earlier trade mark is weak

Result

- No likelihood of confusion
- Contested decision **annulled**
- CTM applied for **may proceed to registration**



R2709/2014-1 irregular shape/irregular shape

CTM applied for



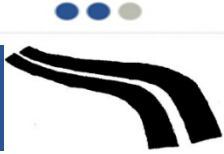
- **Cl. 25**

Earlier trade mark (CTM *et al.*)



- **Cl. 25**

R2709/2014-1 irregular shape/irregular shape

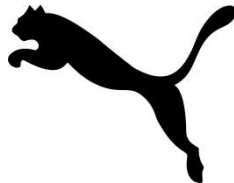


Board of Appeal

- Curved stripes
- Same shape and design, visual similar
- Enhanced distinctive character through use

Result

- Likelihood of confusion
- Contested decision **annulled**
- CTM applied for **rejected**



R1257/2014-1 & R1668/2014-1

platinhase/Goldhase

CTM applied for

- **platinhase**
- **Cl. 14, 25, 29, 30**

Earlier trade mark (CTM et al)

- **GOLDHASE**
- **Cl. 14, 25, 30**

Remark:

- Cl. 14 and 24 not under proof of use
- Cl. 30 under proof of use – deemed registered only for 'chocolate goods'

R1257/2014-1 & R1668/2014-1 platinhase/Goldhase



Opposition Division

- LoC (Likelihood of Confusion)
 - Cl. 14
 - Cl. 25
 - Cl. 30 Coffee
- No LoC
 - Cl. 29
 - Cl. 30 Tea, cocoa and artificial coffee; rice; tapioca and sago; flour and preparations made from cereals; bread, pastry and confectionery; ices; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ice;

R1257/2014-1 & R1668/2014-1 platinhase/Goldhase

Board of Appeal

- ‘Cocoa; pastry and confectionery’ similar to ‘chocolate goods’
 - other Cl. 29 & 30 dissimilar
- ‘Platin’ and ‘Gold’ are precious metals

Result

- No likelihood of confusion for dissimilar goods
- Likelihood of confusion for identical and similar goods

R0257/2015-1 DEMLIK/tea pot

CTM applied for



- **Cl. 30**
 - Tea, tea-based beverages

Earlier trade mark (CTM *et al.*)



- **Cl. 5, 30**
 - Tea, tea-type products, beverages

R0257/2015-1 DEMLİK/tea pot



Board of Appeal

- ‘DEMLİK’: ‘tea-pot’ in Turkish
- Distinctive character per se of earlier trade mark weak
- Similarity based on same descriptive meaning

Result

- No Likelihood of confusion
- Contested decision **confirmed**
- CTM applied for **may proceed to registration**



Just another figure



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Trade Marks registered for Christmas Tree Decoration





Thank You for your Attention
**HAVE A MERRY CHRISTMAS
AND
A HAPPY NEW YEAR**



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Thank You