

In *Deutscher Ring Sachversicherungs-AG v Office for Harmonisation in the Internal Market (OHIM)* (Case T- 209/10, July 5 2012), the General Court has upheld an appeal against OHIM's refusal on absolute grounds to register the word mark DEUTSCHER RING SACHVERSICHERUNGS-AG.

In January 2009 *Deutscher Ring Sachversicherungs-AG* applied to register DEUTSCHER RING SACHVERSICHERUNGS-AG as a Community trademark (CTM) for "insurance; financial affairs; monetary affairs; real estate affairs" in Class 36 of the *Nice Classification*.

In September 2009 the OHIM examiner rejected the application on the grounds that the mark was descriptive within the meaning of Article 7(1)(c) of the Community Trademark Regulation (207/2009). Furthermore, the examiner refused registration because the mark was devoid of any distinctive character pursuant to Article 7(1)(b).

This decision was upheld by the First Board of Appeal of OHIM in March 2010. The board agreed with the examiner that the word mark was composed of descriptive terms, meaning a German alliance for insurances in the legal form of a public limited company. In the board's view, the term 'Deutscher Ring Sachversicherungs-AG' consisted exclusively of a sign which may serve, in trade, to designate the kind, intended purpose and geographical origin of the services, together with the common abbreviation of the legal form of the company (ie, 'AG' for 'public limited company').

Deutscher Ring appealed to the General Court. It raised two pleas: infringement of Article 7(1)(c) and of Article 7(1)(b). Furthermore, Deutscher Ring requested that the court amend the contested decision so as to order the registration of its mark as a CTM. Interestingly, OHIM invited the court to annul the contested decision and refer the case back to OHIM for further consideration.

The General Court first assessed the admissibility of Deutscher Ring's claims. It held that the claim seeking an alteration of the board's decision and registration of the mark was inadmissible, since the court did not have the power to take cognisance of an application to be registered as a CTM.

The General Court went on to consider the merits of the claim that the board's decision was contrary to Article 7(1)(c). Before the court, OHIM's representatives agreed with the board's

analysis of the meaning of the individual elements of the mark. However, OHIM accepted that the word mark DEUTSCHER RING SACHVERSICHERUNGS-AG was not, taken as a whole, descriptive in relation to the services in Class 36.

Considering the unusual consensus between OHIM and the applicant in the appeal proceedings as to the registrability of the mark, the General Court unsurprisingly accepted that the mark was indeed not descriptive. Notwithstanding the fact that the word '*Sachversicherung*' ('insurance') is descriptive in relation to the services applied for in Class 36, and notwithstanding the fact that the term 'AG' was simply the abbreviation of the legal form of the company, the General Court disagreed with the First Board of Appeal that the term '*Deutscher Ring*' would be understood by the relevant public as meaning 'German alliance'. Instead, the court followed the parties' arguments in the proceedings that the meaning of '*Deutscher Ring*' remained vague and must be regarded as an inventive term in relation to insurance services.

Although it would have been sufficient for the appeal to succeed on the basis of the first plea, the court also briefly considered the second plea (ie, infringement of Article 7(1)(b)). It held that the term '*Deutscher Ring Sachversicherungs-AG*' reached the necessary level of distinctiveness. As a consequence, the court also upheld the appeal on the basis of the second plea.

In conclusion, the General Court upheld the appeal in its entirety and annulled the decision of the First Board of Appeal.

OHIM's approach as to the registrability of the mark was, to put it mildly, rather inconsistent. This is not only true with respect to the application in question, but also with respect to various other applications for similar CTMs which were filed on the same day, notably DEUTSCHER RING SACHVERSICHERUNGEN, DEUTSCHER RING LEBENSVERSICHERUNGEN (life insurances), DEUTSCHER RING LEBENSVERSICHERUNGS-AG (all accepted on the basis of inherent distinctiveness) and DEUTSCHER RING KRANKENVERSICHERUNGEN (health insurances - registration refused on the basis of absolute grounds of refusal pursuant to Articles 7(1)(b) and (c)).

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