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Press and Information

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Judgment of the Court of First Instance in Case T-140/02

Sportwetten GmbH Gera v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

THE COURT OF FIRST INSTANCE CONFIRMS THE VALIDITY OF THE FIGURATIVE COMMUNITY TRADE MARK ‘INTERTOPS’ FOR BETTING SERVICES OF ALL KINDS

The prohibition on the holder of the trade mark from offering those services in Germany does not render the Community trade mark contrary to public policy or to accepted principles of morality.

Community Regulation No 40/94¹ provides that, on application to the Office for Harmonisation in the Internal Market (OHIM), a Community trade mark is to be declared invalid where it was registered contrary to public policy or to accepted principles of morality, even of only part of the Community.

In 1999, on application by Intertops Sportwetten GmbH, OHIM registered as a Community trade mark a figurative sign including the word ‘INTERTOPS’ in respect of bookmakers’ services and betting services of all kinds. Sportwetten GmbH Gera, the holder at the time of German word mark INTERTOPS SPORTWETTEN in respect of the same services, sought a declaration that the Community trade mark was invalid, claiming that it was contrary to accepted principles of morality.

In February 2002, the Board of Appeal of OHIM dismissed the appeal brought by Sportwetten GmbH Gera. The appellant sought annulment of that decision before the Court of First Instance of the European Communities, claiming that, since Intertops Sportwetten GmbH does not hold the licence necessary to offer the relevant services in Germany, it would not be authorised to offer those services there or to advertise them.

The Court of First Instance has found that the fact that **Intertops Sportwetten GmbH** does not hold such a licence does not mean that the Community trade mark is contrary to public

¹ OJ L 11, 14.1.1994, p. 1.

policy and to accepted principles of morality within the meaning of Regulation No 40/94. It is the trade mark itself which must be assessed, namely the sign in relation to the goods or services as they appear upon registration of the trade mark, in order to determine whether it is contrary to public policy or to accepted principles of morality. In that connection, the absolute grounds for refusal set out in Article 7(1) of Regulation No 40/94 refer to the intrinsic qualities of the trade mark applied for and not to circumstances relating to the conduct of the applicant for the trade mark. **The prohibition on the holder of the Community trade mark from offering the services in question in Germany and advertising them there does not relate to the intrinsic qualities of that trade mark and thus does not render the trade mark contrary to public policy or to accepted principles of morality.**

Furthermore, it follows from case-law that the Community trade mark regime is an autonomous system which applies independently of any national system. Consequently, whether a sign can be registered as a Community trade mark must be assessed only on the basis of Community legislation.

Finally, although Regulation No 40/94 does not preclude the **use** of a Community trade mark from being **prohibited on the basis of national rules** relating to public policy and accepted principles of morality, that power is irrelevant with regard to whether that trade mark was registered in accordance with the provisions of the Regulation relating to public policy and accepted principles of morality.

Consequently, the Court of First Instance has dismissed the action brought by Sportwetten GmbH Gera.

REMINDER: An appeal, limited to points of law, may be brought before the Court of Justice of the European Communities against the decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: DE, EN, FR

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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