

OHIM PRACTICE

The OHIM strives for higher quality

The OHIM is introducing a series of changes to its systems to reflect the concerted drive for higher quality that the Office is committed to making during 2011. The key initiatives include a commitment to achieving an international quality standard for all Office functions, as well as continuing to improve in areas such as timeliness. For more information, see <http://oami.europa.eu/ows/rw/pages/QPLUS/serviceCharter/serviceCharter.en.do>

New Beetle not new enough

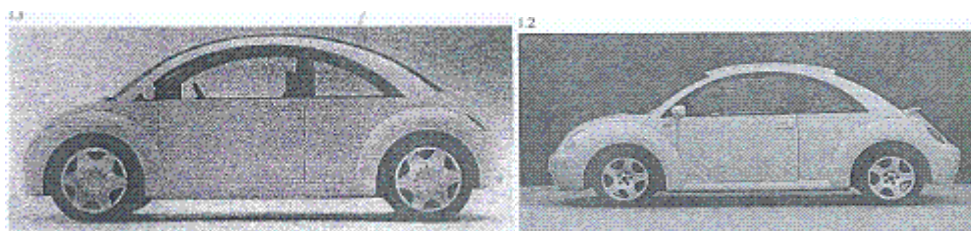
Background of the case

In 1991, a modern interpretation of the classic Volkswagen Beetle was created by Freeman Thomas and J Mays in a design study called Concept 1. In 1994, Volkswagen reproduced a 1:1 model of the Concept 1 and registered it with WIPO as DM/030 041 (IDR-1). Two years later, on the basis of Concept 1, the Design of the “New Beetle” was developed and registered as DM/037 400 (IDR-2)

In 2003, Volkswagen registered the New Beetle as RCD 111596-0001, with the following side view here below:



The RCD was attacked by the German toy manufacturer Autec AG who submitted an application for a declaration of invalidity arguing that the RCD was not new and devoid of individual character in view of the earlier designs IDR-1 and IDR-2 reproduced below:



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In view of the above evidence, on February 2, 2011, the OHIM Cancellation Division concluded that the RDC is devoid of individual character and declared it invalid. Nevertheless, this decision is not yet final and an appeal may still be filed before the OHIM's Board of Appeal.

NEWS FROM LUXEMBURG

RELATIVE GROUNDS

Descriptive elements eliminate likelihood of confusion

In its decision of February 8, 2011 ([T-194/09](#)), the General Court confirmed the Fourth Board of Appeal's decision that there was no likelihood of confusion between the CTM application for LINEAS AEREAS DEL MEDITERRANEO LAM (word mark) for transportation services in Class 39 and the prior marks



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LAN (word mark)

also protected for services in Class 39 among other services in Classes 35 and 43.

The Court confirmed the Board of Appeal decision and considered that conversely to the applicant's arguments, the term LAM in the CTM application was not the dominant element of the sign. In this respect, the Court hold that although, as a general rule, the public will not consider a descriptive element forming part of a mark as the distinctive and dominant element in the overall impression produced by that mark, the fact remains that the low level of distinctiveness of an element of a mark does not necessarily mean, when its size or its position in the sign is taken into account, that that element is negligible in the overall impression produced by the mark.

Therefore, it was concluded that the element "lineas aereas del mediterraneo" cannot be considered to be negligible in the overall impression produced by the CTM application in the minds of the relevant public, irregardless of whether they were Spanish speakers.

Oystra considered similar to Oyster

Kadus

The logo for Oystra, featuring the word "oystra" in a stylized, lowercase font, with "cosmetics" written in smaller text below it.

Earlier trade mark

The logo for Oyster cosmetics, featuring the word "Oyster" in a large, stylized font, with "cosmetics" written in smaller text below it.

Contested community trade mark applied for

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In its decision of February 2, 2011 ([Case T-437/09](#)), the Court held that there was a likelihood of confusion between the above marks as it considered that the words "oystera" and "oyster" dominate the overall impression produced, in the memory of the relevant public by the marks in question since the other words and figurative elements of the signs are negligible.

In view of the above, the trademarks are visually, aurally and conceptually similar so that there is a likelihood of confusion for the relevant goods in Class 3.

ABSOLUTE GROUNDS

The uphill battle for registration of slogans continues

In its decision of February 8, 2011 ([Case T-157/08](#)), the General Court confirmed the Board of Appeal's decision that the mark INSULINE FOR LIFE is not distinctive in connection with services in class 37.

The Court found that the relevant public will understand the term INSULINE FOR LIFE, immediately and without further analytical effort, as a reference to very long-lasting services related to the use of a particularly durable insulation material, and not as an indication of the commercial origin of such services.

Color marks rejected as lacking distinctive character



In its decision of February 3, 2011 (joined [cases T-299/09 and T-300/09](#)), the Court considered that the trademarks set forth above were devoid of any distinctive character. In this respect, it was held that the combinations of broom yellow with silver grey and ochre with silver grey are indistinguishable from the normal external appearance of drill bits and therefore have no elements likely to attract the attention of the consumer.