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News Releases

13 December 2002

SMELLS NO LONGER REGISTRABLE AS TRADE MARKS IN THE EUROPEAN COMMUNITY

The decision issued on 12 December 2002 by the European Court of Justice [ECJ] appears to have put an end to the possibility of registering smells as trade marks in future. Mr. Sieckmann had tried to register as a German trade mark a particular smell, which was described by reference to a chemical formula, and also by the statement that the scent was "balsamically fruity with a slight hint of cinnamon". The German Office objected: a sign is not a trade mark unless it is capable of being represented graphically, and Mr Sieckmann's formula and description did not constitute a suitable graphic representation.

Various ways of representing an odour were submitted to the German courts and then to the ECJ for its consideration. However, representation by means of:

- a chemical formula;
- a description in words;
- the deposit of a sample at the national office;
- a combination of these methods

were all rejected as inadequate. If this kind of sign were registered as a trade mark, no reasonable observer would be able to determine exactly what the sign was, or the scope of protection granted by the registration.

Because the sign in question be represented graphically, the ECJ did not go on to consider any further questions as to whether that particular smell was capable of distinguishing Mr Sieckmann's products.

Although the Court does not go so far as to say a smell will never be registrable, it appears to have ruled out all possible means of representing a smell and hence put an end to an interesting area of trade mark law, albeit one with rather limited practical applications.

- Ends -

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