European Union

“Société des Produits Nestlé”

Decision of the European Court of Justice (First Chamber)

16 September 2015 – Case No. C-215/14

Société des Produits Nestlé SA v. Cadbury UK Ltd

Directive 2008/95/EC, Article 3(1)(e) and (3)

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Keywords Distinctive character acquired through use · KitKat · Three-dimensional mark · Shape resulting from the nature of the goods and shape necessary to obtain a technical result · Four-finger chocolate

1. Article 3(1)(e) of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks must be interpreted as precluding registration as a trade mark of a sign consisting of the shape of goods where that shape contains three essential features, one of which results from the nature of the goods themselves and two of which are necessary to obtain a technical result, provided, however, that at least one of the grounds for refusal of registration set out in that provision is fully applicable to the shape at issue.
2. Article 3(1)(e)(ii) of Directive 2008/95, under which registration may be refused of signs consisting exclusively of the shape of goods which is necessary to obtain a technical result, must be interpreted as referring only to the manner in which the goods at issue function and it does not apply to the manner in which the goods are manufactured.
3. In order to obtain registration of a trade mark which has acquired a distinctive character following the use which has been made of it within the meaning of Article 3(3) of Directive 2008/95, regardless of whether that use is as part of another registered trade mark or in conjunction with such a mark, the trade mark applicant must prove that the relevant class of persons perceive the goods or services designated exclusively by the mark applied for, as opposed to any other mark which might also be present, as originating from a particular company.