European Union

“Simba Toys v. EUIPO”

Decision of the European Court of Justice (First Chamber)
10 November 2016 – Case No. C-30/15 P

Simba Toys GmbH & Co. KG v. European Union
Intellectual Property Office (EUIPO)

Regulation No. 40/94, Art. 7(1)

© Max Planck Institute for Innovation and Competition, Munich 2017

Keywords Three-dimensional trade mark · Rubik’s Cube · Technical function ·
Shape of actual goods · Functionality of essential characteristics ·
Three-dimensional puzzle

1. Each of the grounds for refusal to register listed in Article 7(1) of Regulation No 40/94 must be interpreted in the light of the underlying public interest;
2. In order to analyse the functionality of a sign for the purposes of Article 7(1)(e)(ii) of Regulation No 40/94, which concerns only signs which consist of the shape of the actual goods, the essential characteristics of a shape must be assessed in the light of the technical function of the actual goods concerned and not of an abstract shape. This analysis cannot be made without taking into consideration, where appropriate, the additional elements relating to the function of the actual goods at issue;
3. The fact that a mark registered for ‘three-dimensional puzzles’ in general, without being restricted to those that have a rotating capability, and that the proprietor of that mark did not append to its application for registration a description specifying that the shape at issue had such a rotating capability, cannot preclude account from being taken of the technical function of the actual goods represented by the sign at issue for the purpose of examining the functionality of the essential characteristics of that sign.