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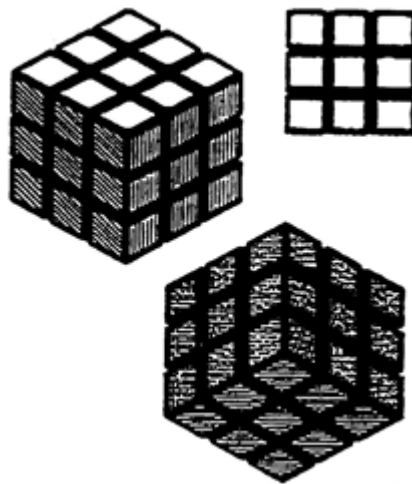
General Court of the European Union
PRESS RELEASE No 131/19
Luxembourg, 24 October 2019

Judgment in Case T-601/17
Rubik's Brand Ltd v EUIPO

The General Court confirms the cancellation of the EU trade mark consisting of the shape of the 'Rubik's Cube'

Given that the essential characteristics of that shape are necessary to obtain the technical result consisting of the rotating capability of that product, that shape could not be registered as an EU trade mark

At the request of Seven Towns, a UK company which manages, inter alia, intellectual property rights relating to the 'Rubik's Cube', in 1999 the European Union Intellectual Property Office (EUIPO) registered the following cube shape as a three-dimensional EU trade mark in respect of 'three-dimensional puzzles':



In 2006, Simba Toys, a German toy manufacturer, applied to EUIPO for a declaration of invalidity of the three-dimensional trade mark on the ground, inter alia, that it involved a technical solution consisting of its rotating capability, as such a solution may be protected only by patent and not as a trade mark. After EUIPO dismissed its application, Simba Toys brought an action before the General Court of the European Union seeking annulment of EUIPO's decision.

By its judgment of 25 November 2014,¹ the General Court dismissed the action brought by Simba Toys on the ground that the cube shape in question did not involve a technical function such as to preclude it from being protected as a trade mark. In particular, the General Court took the view that the technical solution characterising the Rubik's Cube did not result from the characteristics of that shape but, at most, from an invisible mechanism internal to the cube.

Simba Toys brought an appeal before the Court of Justice against the judgment of the General Court. By its judgment of 10 November 2016,² the Court of Justice set aside the judgment of the

¹ Case: [T-450/09](#) Simba Toys GmbH & Co. KG v OHIM see also Press Release No. [158/14](#).

² Case: [C-30/15 P](#), Simba Toys GmbH & Co. KG v EUIPO see also Press Release No. [122/16](#).

General Court and annulled EUIPO's decision. In its judgment, the Court of Justice held, in particular, that, in examining whether registration should be refused on the ground that the cube shape at issue involved a technical solution, EUIPO and the General Court should have also taken into consideration non-visible functional elements of the product represented by that shape, such as its rotating capability.

Following the judgment of the Court of Justice, it fell to EUIPO to render a new decision taking into consideration the findings of the Court. By decision of 19 June 2017, EUIPO stated that the representation of the cube shape at issue revealed three essential characteristics, namely the overall cube shape, the black lines and the little squares on each face of the cube, and the differences in the colours on the six faces of the cube. In that context, EUIPO considered that each of those essential characteristics was necessary to obtain a technical result from an operation consisting in axially rotating, vertically and horizontally, rows of smaller cubes of different colours which are part of a larger cube until the nine squares of each face of that cube show the same colour. Given that the EU Trade Mark Regulation³ prohibits the registration of a shape whose essential characteristics are necessary to obtain a technical result, EUIPO concluded that the mark at issue had been registered in breach of that regulation and, accordingly, cancelled its registration.

Rubik's Brand Ltd, which currently owns the mark at issue, challenged EUIPO's decision before the General Court.

By today's judgment, the General Court finds, first of all, that EUIPO's decision is vitiated by an error of assessment in so far as EUIPO considered that the differences in the colours on the six faces of the cube constituted an essential characteristic of the mark at issue. In that regard, the General Court points out, first, that Rubik's Brand never claimed that, in its view, the possible presence of colours on each of the faces of the cube played an important role in the context of the registration of the mark at issue and, second, that a simple visual analysis of the graphic representation of that mark does not make it possible to discern with sufficient precision the existence of differences in the colours on the six faces of the cube.

Next, the General Court confirms the validity of the definition of the technical result included in the contested decision. In that context, the General Court finds, first, that the cube shape at issue represents the aspect of the actual product in respect of which registration was sought, in the present case the three-dimensional puzzle popularly known as the 'Rubik's Cube'. Second, the General Court observes that that product is a game whose purpose consists of completing a cube-shaped three-dimensional colour puzzle by generating six differently coloured faces and that that purpose is achieved by axially rotating, vertically and horizontally, rows of smaller cubes of different colours which are part of a larger cube until the nine squares of each face of that cube show the same colour.

As regards the analysis of the functionality of the essential characteristics of the mark at issue, the General Court considers, like EUIPO, that the **essential characteristic consisting of the black lines** which intersect, horizontally and vertically, on each of the faces of the cube, dividing each of them into nine small cubes of equal size divided into rows of 3 x 3, **is necessary to obtain the intended technical result.**

Those black lines actually represent a physical separation between the different small cubes, allowing a player to rotate each row of small cubes independently of each other in order to gather those small cubes, in the desired colour scheme, on the cube's six faces. Such a physical separation is necessary to rotate, vertically and horizontally, the different rows of small cubes by means of a mechanism located in the centre of the cube. Without such a physical separation, the cube would be nothing more than a solid block in which none of the individual elements could move independently of the others.

³ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

As regards **the essential characteristic consisting of the overall cube shape**, the General Court considers, like EUIPO, that **the cube shape is inseparable, on the one hand, from the grid structure**, which consists of the black lines that intersect on each of the faces of the cube and divide each of them into nine small cubes of equal size divided into rows of 3 x 3, **and, on the other, from the function of the actual product at issue, which is to rotate, horizontally and vertically, the rows of small cubes**. In the light of those factors, the shape of the product is necessarily that of a cube, that is, a regular hexahedron.

In those circumstances, the General Court concludes that, although the differences in the colours on the six faces of the cube do not constitute an essential characteristic of the mark at issue, **the two characteristics of that mark which have been correctly identified as essential by EUIPO are necessary to obtain the intended result of the product represented by the cube shape at issue, with the result that that shape could not be registered as an EU trade mark**. Therefore, **the General Court upholds the contested decision and dismisses the action brought by Rubik's Brand**.

NOTE: EU trade marks are valid throughout the territory of the European Union and coexist with national trade marks. Applications for registration of an EU trade mark are addressed to EUIPO. Actions against its decisions may be brought before the General Court.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within 2 months and 10 days of notification of the decision. The appeal will not proceed unless the Court first decides that it should be allowed to do so. Accordingly, it must be accompanied by a request that the appeal be allowed to proceed, setting out the issue(s) raised by the appeal that is/are significant with respect to the unity, consistency or development of EU law.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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