

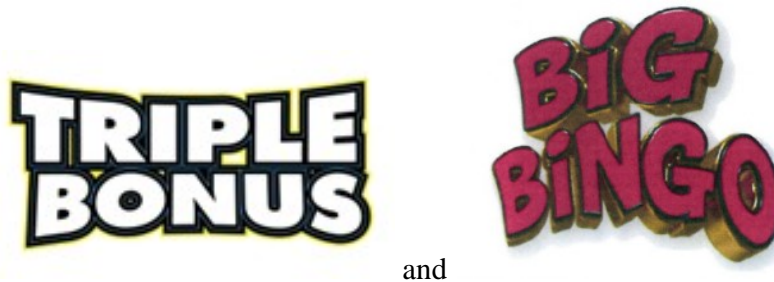
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CP3 in practice: descriptive terms are difficult to register solely on account of stylization

Verena von Bomhard (BomhardIP) · Friday, January 15th, 2016

In two judgments rendered on 14 January 2016, the General Court confirmed OHIM's refusal of stylized marks whose verbal elements were descriptive or non-distinctive.

It is a coincidence that both decisions are only available in Spanish and French and both marks were in classes 9, 28, and 41. The cases are T-318/15 and T-663/14 and concerned the following marks:



While the Court did not expressly refer to it, these judgments fall squarely within the scope of CP3 – short for **Convergence Program no. 3** – which deals with the registrability in the EU of figurative trade marks with purely descriptive words or expressions. In essence, the mere stylization or change of position, and the addition of colour, punctuation marks, or simple geometric or commonplace shapes will not render such a mark registrable. It also notes that where the mark is registrable solely on account of its figurative element, its scope of protection is limited to the overall composition. This is all explained in greater length and illustrated in the Common Communication of 2 October 2015 ([here](#)).

Since discussions on CP3 started back in 2011, **OHIM's practice**, which had previously been quite lenient with respect to descriptive terms combined with figurative elements, **has become considerably stricter**, to an extent where OHIM is now often stricter than even the German PTO (which used to be among the strictest). However, sometimes, applicants can overcome overly strict approaches, as happened – again on 11 January 2016, in the case concerning the application in class 3 for the following mark:

DUO

This had been rejected by the Examiner even though the same applicant already owned two word marks registered as CTMs consisting purely of the word “DUO”. The Board of Appeal reversed this, accepting the mark for registration (Case R 1178/2015-1, decision in German only).

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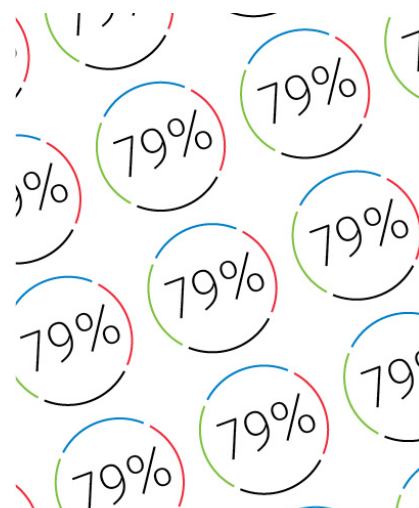
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