

Kluwer Trademark Blog

Germany: Square-shaped packaging stays trademark protected for Ritter SPORT chocolates

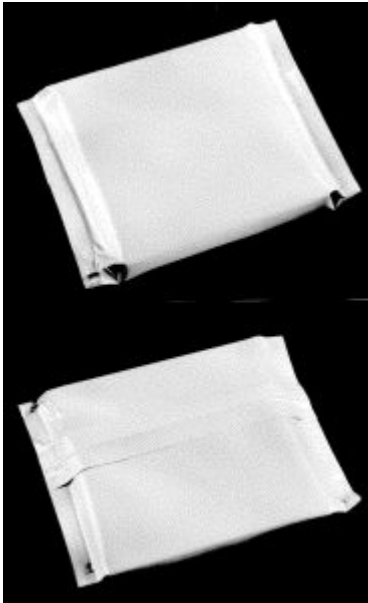
Bettina Clefsen (b/cl IP) · Thursday, July 23rd, 2020



The German Federal Supreme Court today once more decided on cancellation claims against German trademark registrations for square-shaped packaging for chocolate products (Decision of 23 July 2020 in Cases I ZB 42/19 und I ZB 43/19). [According to the Court's press release](#), it confirmed a decision by the Federal Patent Court which rejected the cancellation claims and

allowed the trademarks to stay on the register.

The trademark owner Ritter Sport registered two trademarks as depicted below for chocolate products:



The trademarks were attacked in 2010 with cancellation claims based on the inability of the signs to be protected as trademarks (Section 3 German Trademark Act). The cancellation applicant was initially successful and had the marks cancelled by the Federal Patent Court, because the Federal Patent Court assumed that the marks only consisted of a shape which resulted from the nature of the goods themselves (Section 3 Para. 2 No. 1 German Trademark Act).

The Federal Supreme Court overruled this decision in 2017 ([Decision of 18 October 2017 in Case I ZB 105/16](#)), because the Court disagreed that the marks consisted of a shape which resulted from the nature of the goods themselves. Rather, the shape of the product (packaging) and its corresponding advantages were in this case not specifically relevant for the consumer and therefore did not prevent its registration as a trademark.

At the same time, the Court sent the matter back to the Federal Patent Court for deciding whether the trademarks had to be cancelled because they were registered contrary to Article 3 Para. 2 No. 3 of the German Trademark Act which provides that signs which exclusively consist of a shape which gives substantial value to the goods shall not be capable of being protected as trademarks.

In today's decision the Court denied that the trademarks consisted exclusively of a shape which gives substantial value to the goods and rejected the cancellation claims. The only essential characteristic of the registered trademarks is their square-shaped basis. On the basis of the findings by the Federal Patent Court, it cannot be assumed that the decision of consumers to buy chocolate bars marketed in square-shaped packaging is determined to a large extent by the fact that this packaging shape gives substantial value to the chocolate. According to the findings by the Federal Patent Court the shape has no particular artistic value and does not lead to significant price differences compared with similar products. Also the mere fact that the practical square shape form was emphasized in Ritter Sport's advertising was of no relevance for the value of the shape for the chocolate, though these advertisings may have helped for the square shape to serve as an indication of the origin of the chocolate from a particular company and therefore be associated with certain quality expectations.

Another blog article on this decision will follow once the full decision has been published.

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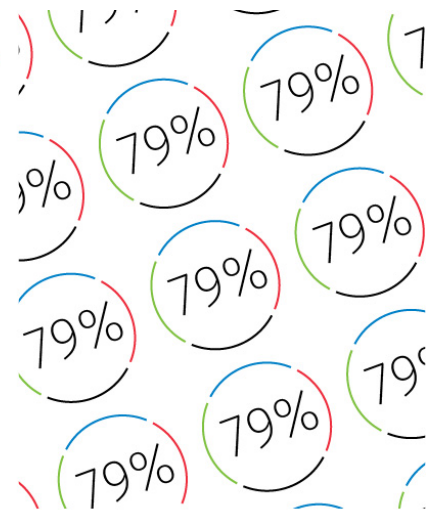
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Shape marks

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