

GERMANY



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Fussball WM 2006 and WM 2006 partially cancelled

The Fédération Internationale de Football Association (FIFA) holds German trade mark registrations for Fussball WM 2006 and WM 2006 for, *inter alia*, goods and services covering sporting events. These registrations were subject to cancellation actions, filed by Ferrero, who submitted that the marks lack distinctive character and are descriptive in relation to such goods and services; moreover, it was also alleged that the trade mark registrations were filed in bad faith.

The German Federal Patent Court (FPC), in joined cases 32 W (pat) 238/04 and 32 W (pat) 237/04, cancelled both these trade marks partially, namely for the mentioned goods and services in relation to the organization of sporting events, holding that the marks lack distinctive character and are purely descriptive, since “Fussball” means “football” and “WM” derives from Weltmeisterschaft, meaning “world championship”.

Having filed an appeal against these decisions, which will be decided by the Federal Supreme Court at the end of April 2006, FIFA argues in favour of distinctiveness in relation to the cancelled goods and services, based on extensive use in the course of trade, according to paragraph 8 (3) of the German Trade Mark Act.

Moreover, FIFA pointed out before the FPC that it has a monopoly on the organization of the soccer world championship. However, the FPC claimed that this does not have an impact on the decision as to whether or not the marks themselves have distinctive character. The FPC rather held that the terms should be kept free for use by the general public to describe the football event without any restrictions. The FPC did not follow FIFA's allegation either in that the marks have acquired distinctiveness for the organization of the soccer world championship, arguing that the marks had only been used in connection with the word FIFA or the FIFA logo and that, according to a survey, a large proportion of the public does not associate the marks with FIFA.

Nevertheless, the registrations were not cancelled by the FPC for, *inter alia*, product merchandising, based on the grounds that such articles are not specific to soccer world championships and the marks are thus not descriptive in relation to these products.

Since the marketing rights of the sponsors amount to nearly €700 million, the marks are of high economic importance to FIFA and the ruling of the Federal Supreme Court will thus be awaited with great interest.