

Watch face mark held to lack distinctive character
European Union - Maiwald Patentanwalts GmbH
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Examination/opposition
International procedures

In *Lange Uhren GmbH v Office for Harmonization in the Internal Market (OHIM)* (Case T-152/07, September 14 2009), the Court of First Instance (CFI) has held that a figurative trademark representing a clock face lacked distinctive character.

In 2002 German company [Lange Uhren GmbH](#), a renowned manufacturer of luxury watches, filed an application for the registration of a figurative trademark representing a clock face for goods in Class 14 of the [Nice Classification](#) - namely, "luxury horological and chronometric instruments; clock faces for luxury horological instruments". The mark also featured dotted lines, which, as Lange indicated, were not "part of the mark, but served only to demonstrate the position of the mark on the goods".

The OHIM examiner rejected the application on the grounds that the mark lacked any distinctive character under Article 7(1)(b) of the [Community Trademark Regulation](#) (40/94) (now Article 7(1)(b) of the [Community Trademark Regulation](#) (207/2009)). The examiner also held that Lange had failed to show that the mark had acquired distinctiveness through use under Article 7(3) of the regulation. The First Board of Appeal of OHIM affirmed and Lange appealed to the CFI.

Before the CFI, Lange argued that the mark consisted of the specific position of different geometrical shapes (two circles and a rectangle) on a clock face. The CFI agreed with the board that the relevant public would perceive the mark as a particular way of presenting the goods in question, but not as an indication of origin. The CFI further held that the criteria for assessing the distinctiveness of three-dimensional marks also applied to figurative marks where such marks consist of the appearance of the goods (see the decision of the European Court of Justice in *Storck* (Case C-25/05)). Applying these criteria, the CFI held that the geometrical shapes in question were common shapes that would not be perceived as a source indicator by the relevant public. The CFI pointed out that the average consumer, in identifying the origin of the goods, would rely on the brand of the watch, rather than the design of the watch face. The CFI concluded that Lange had failed to show that the mark was sufficiently different from comparable watch designs. Therefore, the mark lacked distinctive character.

The CFI then addressed the issue of whether the mark had acquired distinctiveness through use under Article 7(3). Relying on *Bovemij* (Case C-108/05) and *Storck*, the CFI concluded that Lange had failed to prove that its mark had acquired distinctive character through use in the whole of the European Union (ie, the 15 member states that made up the European Union at the time of the application).

The action was thus dismissed.

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