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Shape of a bottle registered

Examination/opposition

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The Slovenian Intellectual Property Office (SIPO) has allowed the registration of a trademark in the shape of a bottle covering goods in Class 32 of the **Nice Classification**, namely "mineral waters, sodas, and other non-alcoholic beverages; fruit drinks and fruit juices; syrups and other preparations for making beverages" (Decision 31207-769/2002-10, August 16 2006). However, it refused registration in respect of goods in Class 21 (bottles) and services in Class 39 ("bottling and packing of drinks especially mineral waters and sodas and other non-alcoholic beverages, fruit drinks and fruit juices") on the grounds that the mark was descriptive for those goods and services.

In 2002 Slovenian company **DrogaKolinska** applied for a three-dimensional trademark featuring a bottle and covering goods and services in Classes 21, 32 and 39. In 2004 SIPO refused the registration of the trademark entirely explaining that the trademark lacked distinctive character and was merely descriptive of the goods and services it covered because it consisted of the shape of a bottle without any label or inscription thereon. SIPO recognized that the shape of the bottle had some minor elements that make it different from other bottles on the market, but these elements were not distinctive enough to enable the consumer to distinguish this particular bottle from other bottles on the market. Furthermore, SIPO opined that the shape could be considered as functional because the narrowing towards the middle of the bottle enabled a better grip on the bottle.

DrogaKolinska challenged SIPO's refusal before the Administrative Court, which in May 2006 remitted the case back to SIPO with instructions for it to reconsider its earlier decision. The Administrative Court shared SIPO's opinion that the trademark is merely descriptive for goods and services in Class 21 and 39, but stated that the bottle is not merely descriptive for goods in Class 32 because the relevant consumer will only indirectly associate the shape of the bottle with the goods in Class 32 (eg, beverages).

SIPO has now issued a decision following the Administrative Court's instructions and has allowed registration of the trademark in Class 32, while refusing it for Classes 21 and 39. This case is interesting because the Administrative Court (and now SIPO) decided that a shape of a bottle might not be distinctive for bottles whereas the same bottle can be distinctive for beverages.

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