

CJEU opens the door to store layout trade mark registration

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In its decision of 10 July 2014, the Court of Justice of the European Union (CJEU) confirmed that it is, in principle, possible to register the layout of a retail store as a trade mark for retail services – read the decision [here](#). The decision is ground-breaking and removes uncertainty for retailers as to whether European trade mark law permits the protection of the appearance of a retail store as a registered trade mark.

The history of the trade mark application proceedings at issue goes back to the United States where Apple Inc. obtained a US trade mark registration for its layout of a retail store in connection with retail services. The representation of the trade mark is depicted as follows:



Apple then registered its trade mark internationally by way of an International (WIPO) Registration designating various countries, including Germany. In the national phase of the application proceedings, the German Patent and Trade Mark Office (GPTO) refused protection of Apple's trade mark in Germany. Apple appealed to the German Federal Patent Court which stayed the proceedings and referred the matter to the CJEU for a preliminary ruling.

The provisions of European trade mark law do not expressly permit the registration of the layout of a retail store in conjunction with services. Article 2 of the [Trade Marks Directive \(2008/95\)](#) reads: "A trade mark may consist of any signs capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings". The CJEU, however, had no issue with getting around this wording and confirmed that a representation, such as Apple's retail store, which is depicted by means of an integral collection of lines, curves and shapes, may constitute a trade mark.

The Court further clarified that, although Apple's trade mark passed the first hurdle in Article 2 of the Directive, it still has to meet the criteria of inherent distinctiveness (Article 3(1)(b) of the Trade Marks Directive) and non-descriptiveness of the characteristics of the services for which registration is sought (Article 3(1)(c) of the Trade Marks Directive). This will be subject to further determination by the

German Federal Patent Court, but the German Court had already indicated in its motion to the CJEU that it believes that these criteria could be met.

In summary, the CJEU held that a sign depicting the layout of the flagship store of a goods manufacturer may legitimately be registered not only for the goods themselves but also in relation to services, where those services do not form an integral part of the offer for sale of those goods.

This decision will be very important to retailers who have a distinct and consistent layout throughout their stores. It will be worth them considering obtaining registered trade mark protection for the layout of their retail stores following the Apple ruling.

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