

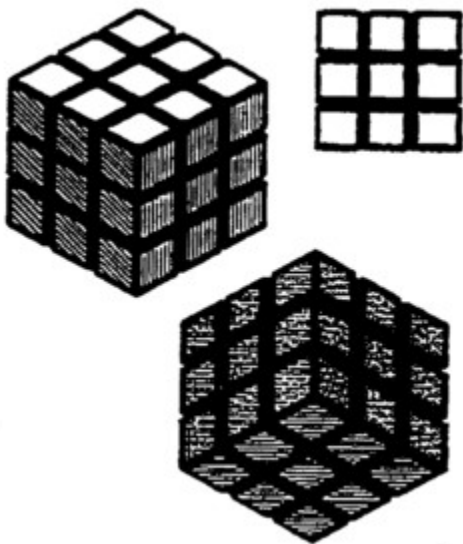
Rubik's Cube Shape Mark Falls on Functionality in the EU

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by Ron Moscona

A trademark registration for the shape of a product (usually in the form of a drawing or 3D illustration) can be useful, particularly where the product is recognised predominantly by its distinctive visual appearance. However, if that shape or appearance is also essential for achieving a practical function, the exclusivity secured by the registration could impede competition in the product market. European Union trademark law allows the registration of trademarks for the shape of goods but only as long as the registered shape does not result from the nature of the product, is not necessary to obtain a technical result and does not give substantial value to the goods. Trademark registration is not intended to confer a monopoly in technical solutions.

The Court of Justice of the EU recently decided to invalidate a registration consisting of three drawings of the Rubik's cube shown in perspective (below) registered for "three dimensional puzzles".



The registration was challenged on the basis that the shapes claimed in the registration were essential for achieving the property of the cube by which each of its segments can rotate independently of the others (in order to change their respective position on the cube). It was argued that this functionality was reflected in the dividing lines between the nine sections of each face of the cube as shown in the drawings. The EU court held that it did not matter for the analysis that the rotating mechanism itself was invisible. When considering a registration representing the shape of the product, the Court held, it is appropriate to take into account the way

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the product actually works. With that information in mind, the registered shape was clearly an aspect essential to the functionality of the rotating cube segments. The shape was essential to achieving the technical function of the product and therefore could not be protected as a trademark.

The Rubik's cube registration follows prior precedent by the same court in 2014 and confirms that drawings do not need to disclose the full mechanism for the shape to be deemed essential to the function. Unless the trademark includes some aesthetic or arbitrary elements that have nothing to do with the technical design, functionality remains a significant barrier for registration of 3D shape marks in the EU.