

# World Trademark Law Report

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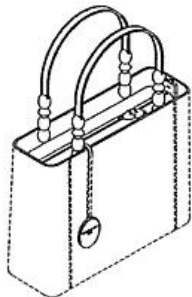
Switzerland

Meyer Lustenberger

## Law on three-dimensional marks taking shape

The Commission of Appeal for IP Rights has issued three decisions that will help to clarify the level of protection available for shape marks.

In one case, [Christian Dior Couture](#) sought to extend the protection of its internationally registered trademark [shape](#) of a handbag to Switzerland (Case MA-AA 30/02). Protection was claimed for the handles of the bag, in particular, the pearls (ovoid-shaped balls) connecting the handle to the bag. The commission refused to register the trademark reasoning that the relevant public would consider the pearls on the handles, which, in the commission's view, were the only possible distinctive elements of the application, to be an aesthetic element of the bag's design rather than an indication of its origin.



[Unilever BV](#) had more success with its request for protection of its international trademark for the [shape](#) of an ice cream (Case MA-AA 17/02). The commission reversed the Trademark Office's refusal to grant protection. It held that the surprising effect of the combination of three thick wavy layers interspersed with two thinner straight layers was not merely an ornamental design, but would be perceived by the public as an indication of origin. The different colours, although indicating the different flavours of the layers, added to the perception of the ice cream's shape as a designation of origin. (For discussion of a UK decision relating to this shape mark, see [Court turns to ECJ for guidance in VIENNETTA shape mark battle](#).)



In the third case, [Reckitt Benckiser BV](#) became the first applicant to successfully register the [shape](#) of a dishwasher tablet as a trademark in Switzerland (Case MA-AA 24/02). The commission noted that, while the rectangular shape of the tablet and its blue and white layers were not distinctive, the shiny pearl inserted into the tablet gave it an unusual and unexpected appearance warranting protection.



It seems that the commission is applying principles akin to copyright's 'originality standard' to shape marks. Thus, the commission is more likely to allow registration of a shape mark if the applicant can show that the shape is surprising, unusual and unexpected. If this is the case, the commission will generally assume that consumers understand the shape as an indication of origin.

It is worth noting that applicants seeking to register three-dimensional trademarks in Switzerland are well advised to file a photograph of the shape claimed rather than a line drawing. Such a trademark may enjoy a narrower scope of protection but is much more likely to be registered.

*Mark Schweizer, Meyer Lustenberger, Zurich*

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