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Switzerland | Meyer Lustenberger

No trademark protection for Swiss masterpiece

In *Chubb Corporation v Intellectual Property Rights Board of Appeal*, the Supreme Court has upheld the Board of Appeal's decision to refuse the registration of the term 'masterpiece' for insurance and financial services. The court held that the term belongs in the public domain and that although Chubb had applied to register it for services rather than goods, this did not render it inherently distinctive.

In 1998 Chubb Corporation, a US-based insurance firm, applied to register with the Swiss Trademark Office the term 'masterpiece' for various services related to insurance and banking. The Intellectual Property Rights Board of Appeal refused registration and following Chubb's appeal, the case made its way to the Supreme Court.

The Supreme Court upheld the Board of Appeal's decision. It noted that a substantial proportion of the Swiss public understands the meaning of the English word 'masterpiece'. It held that since it is a term used to indicate the quality of services offered, pursuant to Article 2(a) of the Trademark Act, it belongs in the public domain and could not be registered as a trademark unless there was evidence to show that it had acquired distinctiveness through use in commerce. The Supreme Court rejected Chubb's argument that the term was inherently distinctive because linguistically only goods (rather than services) are referred to as masterpieces. It was equally unimpressed by the fact that Chubb had successfully registered MASTERPIECE in several other countries and as a Community trademark. It noted that the applicable international treaties, namely the Madrid Agreement and the Paris Convention for the Protection of Industrial Property, allow member states a large degree of discretion regarding the level of distinctiveness required for trademark protection.

The decision is in line with the Swiss Supreme Court's strict practice of refusing the registration of signs indicating product quality, as evidenced by decisions refusing trademark protection for, among others, 'avantgarde' for cars, 'vip-card' for credit cards and 'vantage' for electronic goods.

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