



VOSSIUS & PARTNER

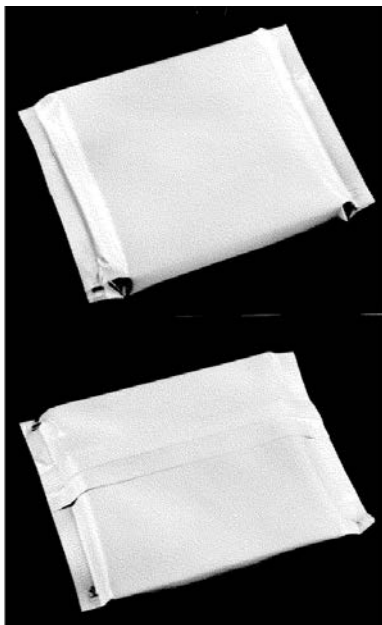
Patentanwälte Rechtsanwälte mbB

Newsflash 18.10.2017

German Federal Supreme Court revokes Federal Patent Court invalidity ruling against Ritter Sport trademark registrations of square chocolate packaging

On October 18, 2017, the German Federal Supreme Court (FSC) informed the public that it had revoked two decisions of the Federal Patent Court (FPC), with which the cancellation of two trademarks for square packaging registered for chocolate bars had been ordered.

The three-dimensional trademarks had been registered, based on recognition acquired in trade, for the front and reverse sides, respectively, of a neutral square packaging, both shown here:



The Federal Patent Court had ordered their cancellation on the grounds that the packaging represented typical use functions of the chocolate bars inside the packaging. The square shape provided the trademark owner with a competitive use advantage over the usual rectangular shape, e.g., because a square chocolate bar could be placed more easily in a jacket pocket. Such shapes should not be monopolized under the German Trademark Act. The trademark owner's argument that the shape of a chocolate bar, other than its ingredients and taste, was not an essential use function of chocolate, had been rejected by the FPC.

In its press announcement of October 18, 2017, the Federal Supreme Court rejected the cancellation grounds of the FPC. The square shape of a chocolate bar was not an essential use function of chocolate. The two decisions were revoked and returned to the Federal Patent Court for reassessment and renewed decisions. The full grounds of the FSC decisions (Cases I ZB 105/16 and I ZB 106/16 of October 18, 2017) have not yet been published.

Contacts:

Jennifer Clayton-Chen

Rechtsanwältin (Attorney-at-Law)

clayton-chen@vossiusandpartner.com