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On-Line Trademarks News Release

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Headline:

[Official emblems - can be refused registration as trade marks](#)

Refusal to register trademark resembling Canadian flag stands

American Clothing Associates, domiciled in Belgium, applied to register a community trademark covering the EU, with a sign that contained a maple leaf above the letters RW. Initially, OHIM refused to register the trademark because it resembled the national emblem of Canada.

One of the corner-stones of laws on trademarks is the Paris Convention on Industrial Property 1883. Article 6ter prohibits the registration of state flags. A lower court decision was appealed by both parties to the European Court of Justice, ECJ.

American Clothing sought to have the mark registered in relation to the services in its application, since the Paris Convention referred to goods. However, the ECJ held that the Community trademarks regulations applied to both goods and services. Article 6ter leaves the extension of the protection guaranteed to trade marks for goods to service marks to the discretion of the States party to the Convention. Accordingly, the ECJ held that Article 7(1)(i) CTMR applies without distinction to trade marks for goods and service marks, so that registration could be refused, for example, to a service mark containing a badge.

The application to register a trademark resembling the Canadian flag was refused.

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