

**SECOND DISPLAY is descriptive for portables and accessories  
European Union - Hoogenraad & Haak, Advertising + IP Advocaten**

**Registration  
Enforcement**

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LG Electronics Inc recently applied to register the word sign SECOND DISPLAY for, among other things, smartphones and watches (Classes 9 and 14 of the Nice Classification). The application was rejected due to descriptiveness, which is an absolute ground of refusal under Article 7(1)(c) of Regulation 207/2009. LG appealed the decision which was rejected by the board of appeal in its ruling of June 10 2016. On June 14 2017 the EU General Court upheld the board's decision. LG had raised three pleas in law which were all rejected by the court.

### **Descriptive character**

First, LG alleged violation of Article 7(1)(c), in particular that the board of appeal had erred in finding that the sign SECOND DISPLAY was descriptive. According to LG, the word combination 'second display' was an expression it had created which was too vague to be considered descriptive of the goods concerned. It claimed that this was especially true for accessories for smartphones in Class 9 (eg, leather cases and flip covers). Furthermore, LG stated that the board of appeal did not take into account the average consumer's perception and was wrong to limit itself only to the perception of professionals.

The board of appeal found that the sign was a combination of two English words, 'second' (meaning "alternate, additional, extra, [or] 1/60th minute of time") and 'display' (meaning "a device capable of representing information visually"). The General Court confirmed that it suffices that according to at least one of its potential meanings the applied-for sign designated one of the characteristics of the goods at issue.

LG did not contest that the relevant public consisted of both average consumers and professionals who were English-speaking or had a basic knowledge of English. According to earlier decisions by the board of appeal, a sign need only be descriptive for at least one part of the relevant public in order for the registration to be refused on the basis of Article 7(1)(c). Therefore, the court ruled that the board of appeal did not err in considering only the perception of professionals.

From the point of view of the relevant public, the combination of the words 'second' and 'display' would be perceived as designating a device with an additional display, or possibly a device showing seconds of time. Since the accessories were ancillary goods and closely linked to the other goods, the same would apply to them. Consequently, the court held that the board of appeal was correct to conclude that, from the point of view of the relevant public, the sign 'second display' was descriptive.

### **Distinctive character**

Second, LG alleged violation of Article 7(1)(b) because the board of appeal had failed to demonstrate a lack of distinctive character. With regard to this plea, the court ruled that according to settled case law it is sufficient that *one* of the absolute grounds for refusal within the meaning of Article 7(1) applies in order for registration to be refused. Therefore, the board was right not to further elaborate on the distinctive character of the sign.

### **Substantiation**

Third, LG alleged violation of Article 75 as the board of appeal had failed to substantiate its conclusion regarding the descriptive character and the lack of distinctiveness. The General Court stipulated that it is settled case law that the statement of reasons must be clear and unequivocal. It is, however, unnecessary to go into all relevant facts and points of law. Furthermore, the court also stipulated that where the same ground of refusal is given for a homogenous category of goods or services, general reasoning for that category may suffice. According to the court, the reasoning of the board of appeal satisfied these requirements. Since LG failed to indicate specific parts that it considered to be insufficiently well-substantiated, the final plea was dismissed as unfounded. Therefore, no trademark protection was granted for LG's SECOND DISPLAY.

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