Refusal of Mercedes-Benz's radiator grille mark overturned on appeal

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- **The EUIPO examiner found that the mark lacked distinctive character for vehicle grilles**
- **In contrast, the Board of Appeal concluded that the sign consisted of a specific and non-generic combination of design elements**
- **Such specific configuration created a distinctive figurative impression that was likely to be perceived as an indication of origin**

Introduction

Under the current EU legal framework, a shape may be registered as an EU trademark if it:

- can be represented clearly and precisely; and
- is capable of distinguishing the goods or services of one undertaking from those of others.

A shape mark will be refused registration if it is devoid of distinctive character – that is, if it is not capable of identifying the goods as originating from a particular undertaking. When it comes to functional shapes, the following are excluded from registration under Article 7(1)(e) of **Regulation 2017/1001**:

1. shapes which result from the nature of the goods themselves;
2. shapes which are necessary to obtain a technical result; and
3. shapes which give substantial value to the goods.

However, a sign which is initially non-distinctive may still be registered if it has acquired distinctive character through use in the market before the date of application.

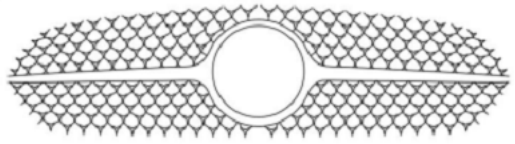
When it comes to vehicle grilles, the EUIPO Guidelines for Examination provide detailed interpretation on how shape marks are assessed, especially regarding vehicle parts like grilles. In this respect, both the EUIPO and the Court of Justice of the European Union (eg, Cases **T-128/01** and **C-136/02 P**) have clarified that the aesthetic design of a vehicle component, such as a grille, may serve as a source indicator if it creates a lasting visual impression on the relevant consumer.

Therefore, for the shape of a vehicle grille to qualify for trademark protection under EU law, it must go beyond technical function or standard design and demonstrate a distinctive character, either inherently or through acquired use, without falling foul of the shape exclusions under Article 7(1)(e).

With the above in mind, on 7 April 2025, in **Case R-2316/2024-1**, the EUIPO's First Board of Appeal overturned an initial refusal by the Examination Division.

Background of the case

The EUIPO examiner had refused in part the registration of the application filed by Mercedes-Benz Group, seeking to protect the image of the vehicle grille depicted below:



The EUIPO examiner had argued that protection could not be awarded for "radiator grilles of metal for vehicles and radiator grilles of non-metallic materials for vehicles", as the figurative sign depicted, irrespective of the combination of its design elements, a typical shape of a radiator grille, which, therefore, lacked distinctive character in relation to said goods. The examiner also criticised the fact that the shape did not contain a logo that could serve as an indication of origin, but merely featured a round device.

Mercedes-Benz Group appealed, arguing mainly that vehicles and vehicle parts are expensive products and that the targeted consumers would pay special attention to them, meaning that the sign would therefore be capable of being recognised as an indication of origin. It further argued that the overall impression of the sign was characterised by a striking star matrix (depicted below), which was distinctive *per se* (and also protected individually as part of its portfolio) and differed significantly from the customary grille structures in the automotive sector:

Board of Appeal decision

Contrary to the EUIPO's initial decision, the Board of Appeal concluded that the sign did not merely comprise a mesh-like structure typically associated with radiator grilles. Rather, the board considered that the sign consisted of a specific and non-generic combination of design elements: a mesh structure combined with a centrally placed circular element, which was itself embedded within a horizontal strip that tapers outward at both ends. This specific configuration was deemed to create a distinctive figurative impression that was likely to be perceived by the relevant public as an indication of origin.

Further, the ability of the sign to function as a trademark was not deemed to be diminished by the presence of the circular element, should the latter be perceived as a placeholder for a logo. In the board's opinion, what mattered was that the overall image projected by the sign was capable of being memorised and recognised by the average consumer, thereby distinguishing the applicant's goods from those of other manufacturers.

In other words, the sign could not be denied the minimum degree of distinctive character, taking into account that vehicle grilles constitute an essential design element which may serve to distinguish between products, even if the sign at issue represented the product's shape itself. Consequently, as the sign possessed the necessary distinctive character to function as a trademark, the board found that the EUIPO examiner had erred in their assessment and annulled the contested decision.

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