

**Lindt's 'Frog King' mark held to be distinctive for chocolate
Switzerland - Meisser & Partners AG**

**Examination/opposition
National procedures**

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The Swiss Federal Administrative Court has allowed an appeal against a decision of the [Federal Institute of Intellectual Property](#) (IGE) in which the latter had refused to allow the registration of the Swiss trademark FROSCHKÖNIG (German for 'Frog King') in the name of [Chocoladefabriken Lindt & Sprüngli AG](#) for various chocolate goods in Class 30 of the [Nice Classification](#). The court found that the mark did not lack distinctiveness, nor did it need to be kept free for use by competitors ([Case B-5996/2013](#), June 9 2015).

Lindt is a well-known chocolate producer. As such, it sought protection for the trademark FROSCHKÖNIG in Class 30. While the IGE allowed the registration of the trademark for some of the goods in Class 30, it refused to register the trademark for all chocolate-related products. The main argument of the IGE was that the sign lacked distinctiveness as it would merely describe the appearance of the claimed goods (ie, a sitting frog).

Lindt disagreed and appealed the decision. It argued that the trademark in question would not directly evoke the form or appearance of the goods but, rather, would evoke an association with the "fabulous and romantic enchantment of sweets and gourmet food".

The Administrative Court started by scrutinising the word '*Froschkönig*' and noted that it corresponds to a character in very popular fairy tales in German literature. Therefore, FROSCHKÖNIG would undoubtedly be associated with these fairy tales. The court further held that FROSCHKÖNIG did not directly describe the goods in Class 30 and did not refer to any attributes or characteristics of these goods. The court went on to state that fairy-tale characters are used rather seldom for sweets. All the evidence from the IGE was considered to be irrelevant, as it showed sweets in very different forms and most of the evidence was not related to Switzerland. As such, the sign was considered distinctive and the court allowed the appeal.

The decision is not yet final and could be appealed by the IGE to the Supreme Court. The practice for fairy-tale characters or animals in general is to consider that such marks are distinctive only if they are "unusual". In another case, the Administrative Court refused to register the sign MILCHBÄRCHEN ('small milk bear') in Class 30 on the ground that it would describe a usual shape for sweets.

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