

## TEUTONIA found to be deceptive for goods not originating from Germany Examination/opposition Switzerland - Meisser & Partners AG National procedures

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The Swiss Federal Administrative Court has dismissed an appeal against a decision of the Federal Institute of Intellectual Property (IGE) in which the latter had refused to register the trademark TEUTONIA of Europe Brands Sàrl in Classes 12, 18, 20 and 25 of the [Nice Classification](#) on the ground that it was deceptive (Case B-3117/2014, August 21 2015).

Europe Brands filed the Swiss trademark application for TEUTONIA (No 65160/2012) on December 19 2012 in Classes 12, 18, 20 and 25. The IGE refused protection for all goods as it considered that the sign TEUTONIA was merely a Latin word meaning 'Germany' and, therefore, there was a risk that consumers would be misled into thinking that the goods originated from Germany. Europe Brands disagreed and asked the IGE to register the mark, arguing that TEUTONIA would be perceived as a coined sign. The IGE confirmed its refusal, stating that the trademark would be allowed only with the limitation "all goods originating from Germany".

On June 6 2014 Europe Brands filed an appeal against the refusal with the Administrative Court. Europe Brands reiterated that TEUTONIA would not be perceived as a geographical indication - if anything, it would be perceived as the name of a student's fraternity association.

The court stated that TEUTONIA could indeed be understood as a geographical or non-geographical indication. The court scrutinised the history of the word, from its use in the 10th century in Italy up to the current use in various dictionaries, which hinted to a geographical understanding. The court reasoned that, although TEUTONIA may no longer be commonly used as meaning 'Germany', terms such as 'teuton' (French), 'teutonisch' or 'teutonico' (Italian) would still be known as referring to Germany. Since all the goods may well be produced in Germany, the mark would be deceptive if the goods were not produced there. As such, the appeal was dismissed.

The jurisprudence of what amounts to a geographical indication, and what may then lead to deception, is strict. As such, the court has already rejected trademarks such as FIRENZA (see [here](#)) or TEGOPORT (see [here](#)) due to deceptiveness.

While Latin is, in general, not commonly known by the relevant average consumers (although the situation is different within specialised circles with regard to pharmaceuticals (see *LEVANE*, Decision B-4070/2007 of April 8 2008)), Latin words may still be known if they are commonly used. The trademark TEUTONIA could therefore have been allowed only if deception had been excluded, with a limitation of the list of goods to products originating from Germany.

According to the revised Trademarks Act (which should come into force on January 1 2017), for industrial products such as those at issue here, such a limitation would require that at least 60% of the manufacturing costs stemmed from Germany and that the "most important fabrication step" took place there. The exact impact of the new law on such limitations remains to be seen.

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