

World Trademark Law Report

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Meyer Lustenberger

LEGO shape mark cancellation action blocked by Supreme Court

In *Mega Bloks Inc v Lego Systems A/S*, the Swiss Federal Supreme Court has overturned an interim decision of the Commercial Court that reviewed whether [Lego Systems A/S's](#) shape mark for toy building blocks was technically essential for such products (Case 4C.86/2004, July 7 2004).

The ruling stems from a long-running dispute between [Mega Bloks Inc](#), challenging the validity of Lego's Swiss registrations of the shape of its blocks as three-dimensional marks, and Lego defending the validity of these registrations.

At first instance, the Commercial Court of Zurich agreed with Mega Bloks, finding that the shape of Lego's blocks was merely functional and thus could not be protected (see [No form mark protection for LEGO](#)). The Swiss Federal Supreme Court overturned this decision and remanded the case in July 2003 (see [Lego Case remanded to determine nature of blocks' shape](#)). It held that the shape of a product (that, in the case at hand, had acquired distinctiveness) is not "technically necessary", and therefore can be protected as a three-dimensional trademark, if there are reasonably feasible alternatives. An alternative is not reasonably feasible if it is:

- less practical;
- less solid; or
- more expensive to produce.

As part of its order, the Supreme Court requested that the Commercial Court review the question of whether "reasonable alternatives" to the shape of Lego's blocks existed.

On remand, the Commercial Court gave an interim decision that limited the examination of reasonable alternatives to blocks that were functionally compatible with Lego's blocks. Lego again appealed to the Swiss Federal Supreme Court.

The Supreme Court overturned the interim decision, holding that the lower court had incorrectly limited its analysis. It stated that alternative forms were reasonably feasible, even if they were not functionally compatible with Lego's blocks.

The court's decision appears to pave the way for (i) Lego's three-dimensional trademarks to be deemed enforceable in Switzerland, and (ii) the creation of a general standard for assessing the validity of three-dimensional marks.

Michael Ritscher, Meyer Lustenberger, Zurich