

World Trademark Review Daily

**Numeral mark held to lack distinctive character
Poland - Patpol - Patent & Trademark Attorneys**

**Cancellation
National procedures**

February 11 2010

The Warsaw District Administrative Court has affirmed a decision of the [Polish Patent Office](#) in which the latter had cancelled the registration for the complex trademark 80 (Registration 156993) for “periodicals containing crossword puzzles; crosswords” (December 7 2009).

The 80 mark was registered in the name of Agencja Wydawnicza Technopol sp zoo for the following goods in Class 16 of the [Nice Classification](#):

“Posters, albums, almanacs, stationery, pads, drawing pads, brochures, periodicals, periodicals containing crossword puzzles, printed matter, forms, newspapers, calendars, tear-out page calendars, index cards, cards, notification cards, postcards, comic books, books, crosswords, writing materials, stickers, notepads, folders, writing instruments, bookmarks, drawing sets, notebooks.”

The cancellation proceedings were instigated by Agencja Promocyjna Komfort-Market.

The Patent Office, in its June 5 2009 decision, held that the mark had been registered in breach of Article 7 of the Law on Trademarks. In particular, the office found that the mark was devoid of distinctive character for “periodicals containing crossword puzzles; crosswords”, because the mark would be perceived by the relevant consumers as an indication of the number of crossword puzzles or crosswords contained in a periodical. The office pointed out that it is a common practice to issue crosswords or crossword puzzles in a collected form.

The office also held that the relevant public consisted of all Polish consumers. According to the office, the number of crosswords or crossword puzzles contained in a periodical constituted a decisive criterion for consumers. The fact that the mark was composed only of the numeral 80, without any noun or adjective, did not mean that it was not descriptive of the number of crosswords or crossword puzzles contained in the periodical. The office thus held that the mark did not contain any elements that would enable consumers to recognize easily and immediately that it indicated the origin of the goods.

In addition, the office held that the graphic elements of the mark (the numeral 80 being written in boldface in a violet colour) did not display any features that would:

- attract the attention of the relevant consumers; and
- might be capable of 'blurring' the direct meaning of the numeral, thus conferring distinctive character on the mark as a whole.

The office concluded that the graphic elements did not give a fanciful character to the mark, but only enhanced the numeral 80.

Technopol appealed to the District Administrative Court.

According to the court, the office was correct in finding that the mark was devoid of distinctive character for “periodicals containing crossword puzzles; crosswords”. The mark did not contain any distinctive elements which would allow consumers to recognize it as an indication of origin of the goods.

The court further held that Technopol was right to argue that complex trademarks should be assessed as a whole. However, a trademark must be fanciful to a certain extent. The court concluded that both the numeral 80 and the graphic elements of the mark were not fanciful.

In addition, the court held that the office had correctly found that the mark was descriptive of “periodicals containing crossword puzzles; crosswords”. The mark, when used in connection with these goods, conveyed unequivocal and clear information about the number of crosswords and crossword puzzles contained in the periodical.

The court also confirmed that the office had correctly interpreted Article 7 of the Law on Trademarks.

The court referred to previous EU decisions in which the [Office for Harmonization for the Internal Market](#) and, subsequently, the Court of First Instance had rejected Technopol's applications to register nine marks

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consisting of a combination of numerals (for further details please see "[Number is up for numeral marks at the CFI](#)").

Technopol may file a cassation appeal with the Supreme Administrative Court.

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