

World Trademark Review *Daily*

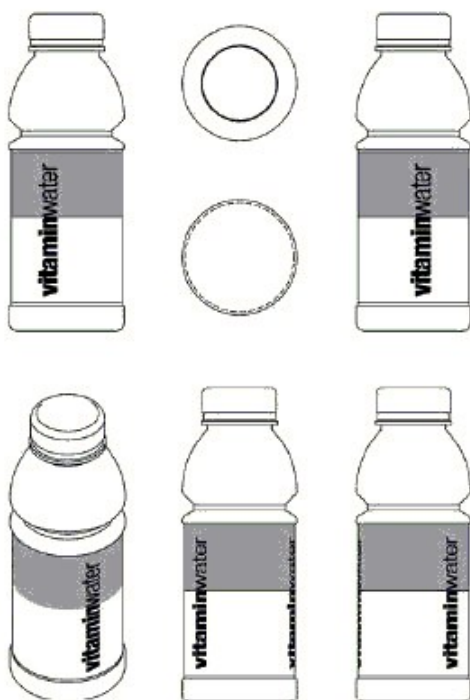
vitaminwater bottle shape refused registration
Israel - Gilat, Baret & Co, Reinhold Cohn Group

Examination/opposition
National procedures

March 13 2014

A trademark application filed by [Energy Brands Inc](#), a subsidiary [The Coca-Cola Company](#), for registration of the configuration of a bottle bearing the word 'vitaminwater' has been refused due to a lack of inherent and acquired distinctiveness (application for the registration of mark No 217460 in the name of Energy Brands Inc, January 29 2014).

Energy Brands sought to register a trademark consisting of depictions of the configuration of a bottle bearing the wording 'vitaminwater':



Registration was sought in Class 32 of the [Nice Classification](#) for non-alcoholic beverages, including water, flavoured water and energy drinks.

The examiner refused to register the mark, arguing that it was a three-dimensional (3D) mark which lacked distinctive character. The applicant argued that the mark was a two-dimensional (2D) mark, but reserved its right to argue that it was a 3D mark. It asserted that the mark possessed inherent distinctiveness due to its unusual shape and design. Further, the applicant argued that, while the product was not marketed in Israel, the shape had acquired distinctiveness through extensive global use and advertising, to which Israeli consumers were exposed when travelling abroad and browsing the Internet.

The registrar, while observing that 3D marks are examined based on the same principles as 2D marks, decided to treat the application, given its form, as an application for a 3D mark. Referring to the evolving law on the registrability of product shapes and product packaging, the registrar noted that, while the registration of product packaging raises less concern regarding an undue restriction of competition than the registration of product shapes, the shape of containers is seldom relied upon to indicate origin and is typically used in conjunction with other trademarks.

The registrar ruled that the mark at issue was not an unusual bottle shape and, therefore, it lacked inherent distinctiveness. As to acquired distinctiveness, the registrar held that, although Israeli consumers may be exposed to global marketing campaigns, the applicant had not shown any connection between its advertising abroad and the Israeli public, and thus had failed to demonstrate that the mark had acquired a secondary meaning in Israel.

Accordingly, the mark was refused registration.

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David Gilat, Orit Gonen and Sonia Shnyder, Gilat Bareket & Co, Reinhold Cohn Group, Tel Aviv

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