

# Rubik's cube loses eu trademark fight over its shape

[Parts of the World](#), [European Union](#)



Rubik's Cube, a multicolored three-dimensional puzzle, lost a trademark battle on Thursday after Europe's top court said its shape was not sufficient to grant it protection against copycats.

The toy, invented in 1974 by Hungarian Erno Rubik, is popular among young and old, with more than 350 million cubes sold worldwide.

British company Seven Towers, which manages Rubik's Cube intellectual property rights, registered its shape as a three-dimensional EU trademark with the European Union Intellectual Property Office (EUIPO) in 1999.

But German toy maker Simba Toys challenged the trademark protection in 2006, saying that the cube's rotating capability should be protected by a patent and not a trademark.

Patents allow inventors to block rivals from making commercial use of their inventions without their approval for a certain period of time while trademarks give intellectual property owners' an exclusive and perpetual right to their designs, logos, phrases or words as long as they use them.

The German company took its case to the Luxembourg-based European Union Court of Justice (ECJ) after EUIPO and a lower EU court dismissed its lawsuit.

ECJ judges agreed with Simba Toys' arguments. Their decision is final and cannot be appealed.

" In examining whether registration ought to be refused on the ground that shape involved a technical solution, EUIPO and the General Court should also

<https://assignbuster.com/rubiks-cube-loses-eu-trademark-fight-over-its-shape/>

have taken into account non-visible functional elements represented by that shape, such as its rotating capability," they said.

EUIPO will now have to issue a new decision based on the ECJ judgment.

### **3-D objects**

Apart from logos and brand names, three dimensional (3-D) objects can also be trademarked, such as the design of Nestle's Perrier bottles or the color of Duracell batteries.

Rubik's Brand Ltd.'s president David Kremer said he was baffled that the court ruled that functionality or a technical solution is implicit in the trademark.

" This judgment sets a damaging precedent for companies wishing to innovate and create strong brands and distinctive marks within the EU, and is not what European lawmakers intended when they legislated for 3-D trademarks," he said.

Litigation over trademarks on three dimensional objects have repeatedly been escalated to Europe's top court.

Last year, the court ruled that Nestle's request to trademark the shape of its four-fingered Kit Kat bar in Britain did not comply with EU law, supporting a complaint by rival Mondelez International.

In 2014, however, the court said the layout of a shop such as Apple's flagship stores may be registered as a trademark under certain conditions.

Lawyer Alex Brodie at London-based Gowling WLG said the Rubik's Cube ruling could be a wake-up call for toy makers.

" The greater impact is likely to be on the toy and game industry who will be considering their portfolio of 3-D trademark registrations to assess how viable those registrations are," she said.

(The story was refiled to change 'he' to 'she' in the last paragraph)

(Reporting by Foo Yun Chee and Robert-Jan Bartunek; Editing by Tom Heneghan)