

Daniel Ronzani

## **Rubik's Cube 3D EU Trademark Invalid**

Category: News

Region: Switzerland

Field of law: Trademark Law

Citation: Daniel Ronzani, Rubik's Cube 3D EU Trademark Invalid, in: Jusletter IT 24 November 2016

[Rz 1] In the early 1980s I used to play for hours with my Rubik's Cube I had received for Christmas. I must admit that every now and then I disassembled and reassembled it to make believe I had matched the colours. But eventually I got the hang of solving this three-dimensional puzzle, albeit, of course, not anywhere near Mats Valk's mind-blowing world record of 4.74 seconds.<sup>1</sup>

[Rz 2] Rubik's Cube was invented 1974.<sup>2</sup> Various patents were granted, e.g. in Hungary in 1975 and in the USA in 1983.<sup>3</sup> These patents have expired, the latter in 2000.<sup>4</sup>

[Rz 3] On April 6, 1999 the Rubik's Cube was registered as community trademark and renewed November 10, 2006. Five days later Simba Toys GmbH & Co. filed a request for a declaration of invalidity of the contested 3D trademark. On October 14, 2008 the EU Intellectual Property Office (EUIPO) rejected Simba Toys' application for request for invalidity. On November 23, 2008 Simba Toys filed an appeal against that decision. By decision of September 1, 2009, EUIPO's board of appeals confirmed the decision of October 14, 2008 and dismissed the appeal.

[Rz 4] On November 10, 2016 the European Court of Justice (ECJ) repealed the 3D community trademark protection for Rubik's Cube.<sup>5</sup> Community trademark law stipulates that if a sign consists exclusively of the shape of goods which is necessary to obtain a technical result, it cannot be registered as trademark.<sup>6</sup> The ECJ held that this regulation seeks to prevent trademark law from granting a monopoly on technical solutions or functional characteristics of a product. The ECJ argued that the functional characteristic of a sign needed to be interpreted *broadly*. It decided that invisible elements, i.e. the technical construction inside the Rubik Cube that makes the coloured elements move, needed to be taken into account in addition to the graphic representation of the trademark.<sup>7</sup>

[Rz 5] I agree that a trademark should not extend the limited period of monopoly granted by a patent. However, unlike the Lego brick, the technical functionality of which is evident in the 3D shape,<sup>8</sup> the technical functionality of the Rubik's Cube is invisible in the 3D trademark.

[Rz 6] In Switzerland Rubik's Cube is protected as name mark,<sup>9</sup> and as of January 18, 2016 there are four applications for 3D trademarks pending.<sup>10</sup> It remains yet to be seen whether these 3D trademark applications will be rejected based on the equivalent Swiss functionality provision<sup>11</sup> and case law<sup>12</sup>.

*Daniel Ronzani*

---

<sup>1</sup> Youtube, [tinyurl.com/h56jojy](https://tinyurl.com/h56jojy).

<sup>2</sup> The Home of Rubik's Cube, [tinyurl.com/jqxobud](https://tinyurl.com/jqxobud).

<sup>3</sup> Patents HU 170062 and U.S. Patent 4 378 116.

<sup>4</sup> Priority date was 28 October 1980.

<sup>5</sup> ECJ, Judgement C-30/15 P of 10 November 2016 – *Simba Toys v. EUIPO*.

<sup>6</sup> Article 7(1)(e)(ii) of Regulation No 40/94 of 20 December 1993 on the Community trademark (OJ 1994 L 11).

<sup>7</sup> ECJ, Judgement C-30/15 P of 10 November 2016 – *Simba Toys v. EUIPO*, para. 39 – 51.

<sup>8</sup> ECJ, Judgement C-48/09 P of 14 September 2010 – *Lego Juris v OHIM*.

<sup>9</sup> IGE, TM No. 2P-308780, class 28.

<sup>10</sup> IGE, TM No. TM No. 50654/2016, 50658/2016, 50659/2016 and 50660/2016, classes 28 and 41.

<sup>11</sup> Art. 2 lit. b Trademark Act (SR 232.11).

<sup>12</sup> E.g. BGE 129 III 514 – *LEGO System A/S v Mega Bloks Inc.*