

### CE'REAL held to be descriptive of chocolate products Switzerland - Meyerlustenberger Lachenal

### Examination/opposition National procedures

November 14 2013

The Federal Supreme Court has dismissed an appeal against a decision of the Administrative Court in a case involving an application to extend protection of the international trademark CE'REAL to Switzerland (4A\_266/2013).

The [Swiss Federal Institute for Intellectual Property](#) (FIIP) issued a total provisional refusal of protection of the international trademark CE'REAL (written 'Ce'Real') for confectionery, chocolate and chocolate products, pastries and ice-cream, as well as preparations for making the aforementioned goods. The FIIP held that the mark would be understood in French as 'céréale' and in English as 'cereal'. Thus, the mark referred to the claimed goods - cereals, muesli or granola - and was directly descriptive of the goods and their content. The FIIP's final refusal was appealed to the Swiss Administrative Court, which upheld the FIIP's decision (as it does in most cases). The applicant then appealed to the Federal Supreme Court.

On September 23 2013 the Federal Supreme Court dismissed the appeal. The court confirmed that consumers could not be expected to perceive the mark as consisting of two parts - that is, the French pronoun 'ce' (meaning 'this') or the French word 'c'est' (meaning 'it is'), with the word 'real' standing for 'genuine' or 'royal' depending on the language. The court further held that these two possible parts had no specific meaning. The court considered that, despite its unusual writing (with a capital letter and an apostrophe in the middle of the word), the mark would be understood as one word - 'cereal'.

The Federal Supreme Court further noted that the court of lower instance had correctly found that the combination of cereal and chocolate is widespread in the food industry. The Federal Supreme Court thus agreed that the mark was descriptive of chocolate products.

Finally, the Federal Supreme Court stated that the typographic composition of the mark (with the capitalisation of certain letters) could not significantly change the overall impression of the mark, and that an additional apostrophe could not lend distinctiveness to a term that belongs to the public domain.

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