

POST cannot acquire distinctiveness for postal services, says court Switzerland - Meyer Lustenberger

Examination/opposition National procedures

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The Supreme Court has upheld a decision of the Swiss Administrative Court in which the latter had refused to register the trademark POST for postal services (Case 370/2008, December 1 2008).

Die Schweizerische Post (the Swiss Post) applied to register the mark POST for various goods and services. The [Federal Institute of Intellectual Property](#) (IGE) refused to register the mark for certain goods and services on the grounds that the mark was descriptive. The Administrative Court upheld the decision of the IGE (for further details please see "[No acquired distinctiveness for POST](#)"). The Swiss Post appealed to the Supreme Court.

The Supreme Court held that 'post' was a common word which might be understood by the Swiss public as either postal products or the company carrying out postal services. However, the court held that the term 'post' no longer referred to one single entity. In this respect, the court relied on the decision of the IGE, in which the latter had held that the term 'post' no longer referred exclusively to the state-owned company, but could be associated with any mail services provider. The court mentioned the results of a public opinion poll in which the majority of respondents stated that 'post' brought to mind the words 'letters' and 'parcels'. Only a minority of respondents associated the word 'post' with a postal company.

Importantly, the court ruled that the term 'post' belonged to the public domain and could not acquire distinctiveness for postal services. According to Article 2(a) of the Swiss [Trademark Act](#), signs that belong to the public domain may be registered as trademarks if they have acquired distinctive character through use. However, trademarks which consist of the shape of the goods or a shape which is necessary to obtain a technical result cannot acquire distinctiveness (Article 2(b) of the Swiss Trademark Act). Arguably, the court erred in holding that POST, a word mark, could not acquire distinctiveness through use.

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