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Trademarks: The Scope of Shapes and Smells Registration

Seminar paper

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A. Introduction

The world we live in offers us numerous examples of smells and shapes.

Imagine you are in the internet visiting the website of Starbucks and you can smell the aroma of freshly roasted coffee-beans. Or you are buying tennis balls and you already can smell freshly cut grass.

Worldwide people know the Coca Cola Company and remember the special shaped bottles. Or if you are visiting France you can buy a drink which is called Orangina in a small round shaped bottle.

These are smells and shapes which are generally used and well known. However, one wonders whether a smell or a shape of a product can be registered as a trade mark. It therefore seems appropriate to look more closely into the phenomenon of smells and shapes as trade marks.

It is certain that trade marks are a company`s most valuable assets.

They are an important part of a company`s intellectual property portfolio. Trade marks quickly become synonymous with the name of a company and the reputation.

Trade marks are a valuable marketing tool. Consumers base their purchasing decisions on the perceived quality on services that trade marks identify.¹

B. Definition of a trade mark

A trade mark is a main type of intellectual property. Intellectual property allows people to own their creativity and innovation in the same way that they can own physical property.

You can divide trade marks into traditional and non-traditional ones, into individual and collective trade marks.

I. Individual trade marks

An individual trade mark in the traditional way is any sign which can distinguish the goods and services of one trader from those of another.²

¹ Scandia, Germania, Davis

<http://www.scandiagermania.com/eng/trademark.faq.html>

² Eisenmann, Grundriss Gewerblicher Rechtsschutz und Urheberrecht, p. 112.