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# European Intellectual Property Review

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**“Have a Break ... Have a CJEU Kit Kat Reference”: Clarification Sought in what Circumstances the Shape of a Product can be Registered as a Trade Mark—*Société des Produits Nestlé SA v Cadbury UK Ltd* 733**

Arnold J, in the High Court of England and Wales, referred three questions to the Court of Justice of the European Union regarding the registration of a three-dimensional chocolate product as a trade mark. Clarification was sought on issues concerning the assessment of acquired distinctive character, and the absolute grounds of refusal applying to shapes which result from the nature of the goods, or which have a technical effect. The judgment also clarifies the correct approach to take to inherent distinctive character, and analyses UK and European case law on shape trade marks.

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**Auteurswhat? Dutch Copyright Law not Tolerated by the CJEU: *ACI Adam BV v Stichting de Thuiskopie and Stichting Onderhandeligen Thuiskopie vergoeding* (C-435/12) 738**

On April 10, 2014, the Court of Justice of the European Union held that the private copying exception found in art.5(2) of Directive 2001/29 is only applicable to copies made from lawful sources. The decision primarily concerned the scope of art.5(2)(b) and the effect of the “three-step test” found in art.5(5) on that scope. The decision has had a harmonising effect on Member State law, by narrowly interpreting the private copy exception in art.5(2)(b).

AGATA SOBOL

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