

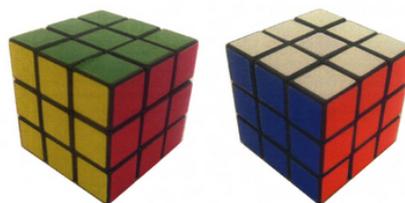
CASE COMMENT

BY ALICIA MARTIN



FIRST BOARD OF APPEAL OF THE EUIPO HAS ANNULLED THE 3D MARKS OF SPIN MASTER PROTECTING THE RUBIK'S CUBE IN CLASS 28

In recent decisions ([R 850/2022-1](#) and others) the First Board of Appeal of the EUIPO has annulled the 3D marks of SPIN MASTER protecting the Rubik's cube in class 28:



According to the Board the Rubik's cube combining the colours red, green, blue, orange, yellow and white consists exclusively of the shape of goods which is necessary to obtain a technical result. The Board also concludes that the fact that the same technical result of the Rubik's cube could be obtained by adding patterns, symbols or letters to the surface of the cubes is irrelevant in the assessment of the functional character of the colours at issue.

The decision (which may be appealed before the General Court) reminds that the mere fact, even if proven to be true, that a shape mark or part of its elements may enjoy design or copyright protection for a limited period of time cannot justify the finding that its registration is not in breach of Article 7(1)(e)(ii) of Regulation No 207/2009 (current Article 7(1)(e)(ii) of Regulation No 2017/1001).

