

# BAKER MCKENZIE ADVISES TEFAL ON TURNING ITS RED DOT INTO A POSITION MARK

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Baker McKenzie has advised Tefal on managing to turn its red dot into a position mark. The Tefal company applied for a position mark -red dot mark- for goods in class 21, which mainly comprises small hand-operated appliances and utensils for domestic and culinary use.

The request was denied by the Spanish Patent and Trademark Office (OEPM) since for this institution, it lacked distinctive character, a decision for which the company appealed to the Superior Court of Justice of Madrid (TSJM) to annul the resolution and agree to the granting of registration.

The TSJM then affirms that "contrary to the criterion accepted by the SPTO, the necessary distinctive character can be predicated of the requested graphic mark" and "a high percentage of consumers associate the red dot located in the center of a kitchen utensil" with the products of the company".

This sentence is a pioneer in Spanish jurisprudence and represents an advance in position marks. In addition, the ruling confirms once again the importance of direct evidence of consumer perception - such as market studies and certificates of notoriety from the Chambers of Commerce- to demonstrate that a sign is recognized in the market as an indicator of commercial origin of the products.

The case has been led by **Cristina Duch** (pictured left), partner of the IP department with the support of associate **Itziar Osinaga** (pictured right).