

JUDGMENT OF THE COURT OF FIRST INSTANCE**of 10 November 2004****in Case T-396/02: August Storck KG v Office for Harmonisation in the Internal Market (Trade marks and Designs) (OHIM) ⁽¹⁾****(Community trade mark — Three-dimensional mark — Shape of a sweet — Absolute grounds for refusal — Article 7(1)(b) of Regulation (EC) No 40/94 — Distinctive character acquired through use — Article 7(3) of Regulation (EC) No 40/94)**

(2005/C 19/47)

(Language of the case: German)

In Case T-396/02: August Storck KG, established in Berlin, represented by H. Wrage-Molkenthin, T. Reher, A. Heise and I. Rohr, lawyers, with an address for service in Luxembourg against Office for Harmonisation in the Internal Market (Trade marks and Designs) (OHIM) (Agents: B. Müller and G. Schneider) – action for annulment of the decision of the Fourth Board of Appeal of OHIM of 14 October 2002 (Case R 187/2001-4), refusing registration of a three-dimensional mark comprised of the shape of a light-brown sweet – the Court of First Instance (Fourth Chamber), composed of H. Legal, President, V. Tiili and M. Vilaras, Judges; B. Pastor, Deputy Registrar, for the Registrar, has given a judgment on 10 November 2004, in which it:

1. Dismisses the action;
2. Orders the applicant to pay the costs.

⁽¹⁾ OJ C 55 of 8.3.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE**of 10 November 2004****in Case T-402/02: August Storck KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ⁽¹⁾****(Community trade mark — Figurative mark representing the form of a twisted wrapper (shape of a sweet wrapper) — Subject-matter of the application — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94 — Distinctive character acquired through use — Article 7(3) of Regulation (EC) No 40/94 — Right to be heard — Article 73(1) of Regulation (EC) No 40/94 — Examination of the facts by OHIM of its own motion — Article 74(1) of Regulation (EC) No 40/94)**

(2005/C 19/48)

(Language of the case: German)

In Case T-402/02: August Storck KG, established in Berlin (Germany), represented by H. Wrage-Molkenthin, T. Reher,

A. Heise and I. Rohr, lawyers, with an address for service in Luxembourg, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), (Agents: B. Müller and G. Schneider) – action for annulment of the decision of the Second Board of Appeal of OHIM of 18 October 2002 (Case R 0256/2001-2) refusing registration of a trade mark representing a twisted wrapper (shape of a sweet wrapper) – the Court of First Instance (Fourth Chamber), composed of H. Legal, President, V. Tiili and M. Vilaras, Judges; B. Pastor, Deputy Registrar, for the Registrar, has given a judgment on 10 November 2004, in which it:

1. Dismisses the action;
2. Orders the applicant to pay the costs.

⁽¹⁾ OJ C 55 of 8.3.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE**of 9 November 2004****in Case T-116/03 Oresto Montalto v Council of the European Union ⁽¹⁾****(Officials — Recruitment — Temporary agent — Vacancy notice — Recruitment procedure)**

(2005/C 19/49)

(Language of the case: French)

In Case T-116/03, Oresto Montalto, official of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), residing in Alicante (Spain), represented by G. Vandersanden, lawyer, against Council of the European Union (Agents: B. Hoff-Nielsen and F. Anton) – application, first, for annulment of the Council decision of 23 May 2002 appointing an additional chairperson of a Board of Appeal and President of the Appeals Department of OHIM (OJ 2002 C 130, p. 2) and, secondly, for damages – the Court of First Instance (Fifth Chamber), composed of P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges; I. Natsinas, Administrator, for the Registrar, has given a judgment on 9 November 2004, in which it: