

## Case T-29/04

**Castellblanch, SA**

**v**

**Office for Harmonisation in the Internal Market  
(Trade Marks and Designs) (OHIM)**

(Community trade mark — Opposition proceedings — Application for a figurative Community trade mark containing the word element 'CRISTAL CASTELLBLANCH' — Earlier national word mark CRISTAL — Genuine use of the earlier mark — Likelihood of confusion — Article 8(1)(b), Article 15(2)(a) and Article 43(2) and (3) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Third Chamber), 8 December 2005 II - 5311

### Summary of the Judgment

1. *Community trade mark — Observations of third parties and opposition — Examination of the opposition — Proof of use of the earlier mark — Simultaneous use of several signs (Council Regulation No 40/94, Arts 15(2)(a) and 43(2) and (3))*

2. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Figurative mark comprising the word element 'CRISTAL CASTELLBLANCH' and the word mark 'CRISTAL'*

(Council Regulation No 40/94, Art. 8(1)(b))

1. Proof of genuine use of an earlier national or Community trade mark which forms the basis of an opposition against a Community trade mark application also includes proof of use of the earlier mark together with other signs, in so far as such use does not alter the distinctive character of that mark in the form under which it was registered.

(see paras 30-34)

2. For the average French consumer and professionals and specialists from the wine-growing and restaurant sectors there is a likelihood of confusion between the figurative sign comprising the word element 'CRISTAL CASTELL-

BLANCH', in respect of which registration is sought as a Community trade mark for 'Spanish sparkling wines of the cava variety', belonging to Class 33 of the Nice Agreement and the word mark CRISTAL registered earlier in France for 'wines originating from France, namely Champagne, sparkling wines and alcoholic beverages (except beers)' belonging to that same class, even though renown or reputation of the earlier mark for 'wines from Champagne' cannot be found for the whole of the public but only for professional consumers who are highly specialised in the field, given the identity or, at least, the high degree of similarity between the goods in dispute and the similarity of the respective signs.

(see paras 46, 67-68)