

Case T-346/04

Sadas SA

v

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

(Community trade mark — Opposition proceedings — Application for Community word mark ARTHUR ET FELICIE — Earlier figurative mark including the word element ‘Arthur’ — Relative ground of refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Third Chamber), 24 November 2005 II - 4894

Summary of the Judgment

- 1. 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 — Similarity between the goods or services in question — Criteria for assessment
(Council Regulation No 40/94, Arts 8(1)(b) 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 — Word mark ARTHUR ET FELICIE and figurative mark including the word element 'Arthur'*
(Council Regulation No 40/94, Art. 8(1)(b))
3. *Community trade mark — Decisions of the Office — Legality — Examination by the Community judicature — Criteria*
((Council Regulation No 40/94)

1. When examining an opposition brought by the proprietor of an earlier mark under Article 8(1)(b) of Regulation No 40/94 on the Community trade mark, in order to assess the similarity of the goods or services concerned all the relevant factors which characterise the relationship between them should be taken into account. Those factors include, inter alia, their nature, their end users and their method of use and whether they are in competition with each other or are complementary.

tion and not to those for which the trade mark has been used unless, following an application made under Article 43(2) and (2) of Regulation No 40/94, it is apparent that the earlier mark has been used in relation to part only of the goods or services for which it is registered. In that case, the earlier mark is deemed registered only for that part of those goods..

(see paras 33-35)

Where the goods covered by the earlier mark include the goods covered by the trade mark application, those goods are considered to be identical.

Furthermore, comparison of the goods must relate to those covered by the registration of the trade marks in ques-

2. There is, for the average French consumer, a likelihood of confusion between the word sign ARTHUR ET FELICIE, for which registration was sought for 'clothing; footwear (except orthopaedic footwear); headgear, all these goods for children sold by mail order and in the specialised shops distributing the catalogue products' in Class 25 of the Nice Agreement, and the figurative mark

including the verbal element 'Arthur' previously registered in France for 'textile articles, both ready to wear and made to measure, including boots, shoes and slippers' in the same class, given the identity of the goods at issue, a certain similarity of the corresponding signs and the high distinctive character of the earlier mark, at least by reason of its recognition on the market.

3. Decisions concerning registration of a sign as a Community trade mark which the Boards of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) are called on to take under Regulation No 40/94 are adopted in the exercise of circumscribed powers and are not a matter of discretion. Accordingly, the registrability of a sign as a Community trade mark must be assessed solely on the basis of that regulation, as interpreted by the Community judicature, and not on the basis of a previous practice of the Boards of Appeal.

(see para. 69)

(see para. 71)