

## JUDGMENT OF THE COURT OF FIRST INSTANCE

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of 8 March 2005

of 9 March 2005

**in Case T-32/03 Leder & Schuh AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) <sup>(1)</sup>**

**in Case T-33/03 Osotspa Co. Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) <sup>(1)</sup>**

*(Community trade mark — Opposition proceedings — Earlier national word mark ‘Schuhpark’ — Application for Community word mark ‘JELLO SCHUHPARK’ — Relative ground for refusal — Partial refusal to register — Article 8(1)(b) of Regulation (EC) No 40/94)*

*(Community trade mark — Opposition proceedings — Earlier national and Community figurative SHARK marks — Application for Community word mark Hai — Absolute ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)*

(2005/C 115/37)

(2005/C 115/38)

*(Language of the case: German)**(Language of the case: German)*

In Case T-32/03: Leder & Schuh AG, established in Graz (Austria), represented by W. Kellentur and A. Schlaffge, lawyers, against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: G. Schneider and B. Müller), the other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance, being Schuhpark Fascies GmbH, established in Warendorf (Germany), represented by A. Peter, lawyer — action against the decision of the Third Board of Appeal of OHIM of 27 November 2002, in the corrected version of 9 December 2002 (Case R 494/1999-3), relating to opposition proceedings between Schuhpark Fascies GmbH and Leder & Schuh AG — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, N.J. Forwood and S. Papa-savvas, Judges; B. Pastor, Deputy Registrar, for the Registrar, gave a judgment on 8 March 2005, in which it:

1. Dismisses the application;
2. Orders the applicant to bear the costs.

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<sup>(1)</sup> OJ C 101 of 26.4.2003.

In Case T-33/03: Osotspa Co. Ltd, established in Bangkok (Thailand), represented by C. Gassauer-Fleissner, lawyer, with an address for service in Luxembourg, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl, T. Eichenberg and G. Schneider), the other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance, being Distribution & Marketing GmbH, established in Salzburg (Austria), represented initially by C. Hauer and subsequently by V. von Bomhard, A. Renck and A. Pohlmann, lawyers — action brought against the decision of the Third Board of Appeal of OHIM of 27 November 2002 (Case R 296/2002-3) concerning opposition proceedings between Osotspa Co. Ltd and Distribution & Marketing GmbH — the Court of First Instance (Fourth Chamber), composed of H. Legal, President, V. Tiili and V. Vadapalas, Judges; D. Christensen, Administrator, for the Registrar, gave a judgment on 9 March 2005, in which it:

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

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<sup>(1)</sup> OJ C 135 of 7.6.2003.