

ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
26 February 2003 *

In Case T-7/02,

ZAPF Creation AG, established in Rödentel/Coburg (Germany), represented by
A. Kockläuner, lawyer,

applicant,

v

Office for Harmonisation in the Internal Market (Trade Marks and Designs)
(OHIM), represented by J.F. Crespo Carrillo, acting as Agent,

defendant,

* Language of the case: English.

the other party to the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) being:

Jesmar SA, established in Alicante (Spain),

ACTION brought against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 17 October 2001 (Case R 1123/2000-1), which was served on the applicant on 29 October 2001, relating to opposition proceedings between ZAPF Creation AG and Jesmar SA,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: V. Tiili, President, P. Mengozzi and M. Vilaras, Judges,

Registrar: H. Jung,

having regard to the application lodged at the Registry of the Court on 14 January 2002,

having regard to the response lodged at the Registry of the Court on 2 May 2002,

makes the following

Order

- 1 On 1 April 1996, the applicant filed an application for a Community trade mark at the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (hereinafter 'OHIM'), pursuant to Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), as amended.
- 2 The mark in respect of which registration was sought is the following figurative mark:



- 3 The products for which registration is sought are within Class 28 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended (hereinafter 'the Nice Classification'), and correspond to the following description: 'Dolls as playthings and accessories for these dolls in the form of playthings'.

- 4 On 3 August 1998, Jesmar SA (hereinafter ‘the other party to the proceedings before OHIM’) filed an opposition against the application for the Community trade mark. The earlier Spanish mark relied on in support of the opposition is the word COLETTE, registered for ‘games and playthings, dolls and puppets’ in Class 28 of the Nice Classification.
- 5 By a decision of 27 September 2000, the Opposition Division rejected the opposition brought under Article 8(1)(a) and (b) of Regulation No 40/94.
- 6 By a decision of 17 October 2001, the First Board of Appeal upheld the claim of the other party to the proceedings before OHIM against the decision of the Opposition Division. The Board of Appeal essentially found that the catalogues and price lists were sufficient to prove genuine use of the earlier trade mark and that there was accordingly a likelihood of confusion between the mark sought and the earlier mark.
- 7 On 13 February 2002, English was adopted as the language of the case pursuant to Article 131(2) of the Rules of Procedure.
- 8 By a letter of 28 August 2002, OHIM informed the Court of First Instance that the other party to the proceedings before OHIM had, by a letter dated 8 August 2002, sent it an agreement concluded between that party and the applicant, and that it was therefore withdrawing its opposition to the registration of the Community trade mark application. OHIM accordingly submits that, pursuant to Article 113 of the Rules of Procedure, there is no need to adjudicate on this case and requests the Court not to order it to bear the costs.

- 9 By a letter of 16 October 2002, in response to a request for observations from the Court on the application for a decision not to proceed to judgment lodged by the defendant, the applicant confirmed that it has reached an amicable settlement with the other party to the proceedings before OHIM. It says that the action before the Court of First Instance has indeed become devoid of purpose and considers that each party ought to bear its own costs.
- 10 Accordingly, it is sufficient to observe that, pursuant to Article 113 of the Rules of Procedure, having regard to the amicable settlement concluded between the applicant and the other party to the proceedings before OHIM, of which the Court has been duly informed by the defendant and the applicant, this action has become devoid of purpose. It follows that there is no further need to adjudicate.

Costs

- 11 Article 87(6) of the Rules of Procedure provides that, where a case does not proceed to judgment, the costs are to be in the discretion of the Court of First Instance.
- 12 In the circumstances of this case, it must be found that the reason why the action has not proceeded to judgment is because of the amicable settlement reached between the applicant and the other party to the proceedings before OHIM and not any agreement entered into by the applicant and the defendant. The applicant must therefore be ordered to bear its own costs and those incurred by OHIM.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber),

hereby orders:

1. There is no need to adjudicate on the action.
2. The applicant shall pay the costs.

Luxembourg, 26 February 2003.

H. Jung

Registrar

V. Tiili

President