

	<p>TRIBUNAL DE PRIMERA INSTANCIA DE LAS COMUNIDADES EUROPEAS Soud prvního stupně Evropských společenství DE EUROPÆISKE FÆLLESSKABERS RET I FØRSTE INSTANS GERICHT ERSTER INSTANZ DER EUROPÄISCHEN GEMEINSCHAFTEN EUROOPA ÜHENDUSTE ESIMESE ASTME KOHUS ΠΡΩΤΟΔΙΚΕΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES TRIBUNAL DE PREMIÈRE INSTANCE DES COMMUNAUTÉS EUROPÉENNES CÚIRT CHÉADCHÉIME NA GCÓMHPHOBAL EORPACH TRIBUNALE DI PRIMO GRADO DELLE COMUNITÀ EUROPEE EIROPAS KOPIENU PIRMĀS INSTANCES TIESA</p>	<p>EUROPOS BENDRIJŲ PIRMOSIOS INSTANCIJOS TEISMAS EURÓPAI KÖZÖSSÉG EK ELSŐFOKÚ BÍRÓSÁGA IL-QORT TAL-PRIMI INSTANZA TAL-KOMUNITAJIET EWROPEJ GERECHT VAN EERSTE AANLEG VAN DE EUROPESE GEMEENSCHAPPEN SĄD PIERWSZEJ INSTANCIJ WSPÓLNOT EUROPEJSKICH TRIBUNAL DE PRIMEIRA INSTÂNCIA DAS COMUNIDADES EUROPEIAS SÚD PRVÉHO STUPŇA EURÓPSKÝCH SPOLOČENSTEV SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT</p>
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Press and Information

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13 September 2006

Judgment of the Court of First Instance in Case T-191/04

MIP Metro Group Intellectual Property GmbH & Co. KG v Office for Harmonisation in the Internal Market (OHIM)

THE COURT OF FIRST INSTANCE ANNULS OHIM'S DECISION NOT TO REGISTER THE FIGURATIVE SIGN 'METRO' AS A COMMUNITY TRADE MARK

In the absence of a period during which they co-exist, no conflict can be said to arise between the mark applied for and an earlier national mark

On 20 March 1998, MIP Metro filed an application at the Office for Harmonisation in the Internal Market (OHIM) for registration of the figurative sign 'METRO' as a Community trade mark. Tesco Stores filed a notice of opposition to that registration on the basis of an earlier national word mark whose term of protection expired on 27 July 2000.

On 13 June 2000, OHIM informed Tesco Stores that it had to submit a certificate of renewal of the earlier mark within four months. The deadline was subsequently extended and eventually expired on 13 March 2003. However, proof of renewal was not provided within that time-limit.

On 12 June 2003, the Opposition Division rejected the opposition on the ground that Tesco Stores had not proved that its earlier right was still in force. Tesco Stores filed a notice of appeal against that decision with the OHIM Board of Appeal. The latter set aside the decision of the Opposition Division after finding that on the date on which the opposition was filed and even on the date evidence of renewal was requested, the earlier right was still in force and, accordingly, Tesco Stores did not have to prove renewal of its trade mark. MIP Metro brought an action against that decision before the Court of First Instance of the European Communities.

The Court of First Instance observes, firstly, that the purpose of the rules concerning grounds for refusal and opposition proceedings is to ensure that, by making it possible to refuse registration of a new mark which may conflict with an earlier mark as there is a likelihood of confusion between them, the earlier mark may retain its function of identifying origin. It finds that no

conflict can arise between the mark applied for and an earlier mark which has expired during the opposition proceedings, given that the mark applied for may be registered only after the end of the opposition proceedings. There was therefore no period during which both marks co-existed.

Accordingly, the Court finds that the protection which the Board of Appeal recognised the earlier mark as having is not justified by the need to protect its function of identifying origin.

In those circumstances, **the Court of First Instance annuls the decision of the Board of Appeal of OHIM.**

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: FR, CS, DE, EN, HU, PL, SK, SL

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-191/04>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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