

Case T-123/04

Cargo Partner AG

v

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

(Community trade mark — Word sign CARGO PARTNER — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94 — Absence of distinctive character)

Judgment of the Court of First Instance (First Chamber), 27 September 2005 II - 3982

Summary of the Judgment

- 1. Procedure — Application initiating proceedings — Formal requirements — Signature by a lawyer — Applicant represented by a legal person authorised to practise the profession of lawyer in a Member State through its associates — Admissibility (Statute of the Court of Justice, Art. 19, third and fourth paras)*

2. *Community trade mark — Appeals procedure — Appeals before the Community judicature — Application initiating proceedings — Formal requirements — Summary statement of pleas — Repetition, wholly or in part, of the arguments already invoked before OHIM — Whether permissible*
(Statute of the Court of Justice, Art. 21; Rules of Procedure of the Court of First Instance, Art. 44(1)(c); Council Regulation No 40/94, Art. 6)

3. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character — Word sign CARGO PARTNER*
(Council Regulation No 40/94, Art. 7(1)(b))

1. The effect of the third and fourth paragraphs of Article 19 of the Statute of the Court of Justice, which governs the procedure before the Court of First Instance pursuant to the first paragraph of Article 53 of that Statute, is that only a lawyer authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area may validly undertake procedural steps before the Court of First Instance on behalf of parties other than the States and the institutions.

a Member State and to appear before all the courts of that Member State is in this respect admissible.

(see paras 18, 20)

2. Under Article 21 of the Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, every application is to contain a summary of the pleas in law on which it is based and that information must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court of First Instance to rule on the action.

An application lodged by a non-privileged party which is represented by a legal person authorised to practise, through its associates authorised to represent it, the profession of lawyer in

In an action brought on the basis of Article 63 of Regulation No 40/94 on the

Community trade mark against the decision of a Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs), the fact of repeating, wholly or in part, the arguments already invoked before OHIM and not simply referring to them, does not amount to an infringement of Article 21 of the Statute of the Court of Justice or Article 44 of the Rules of Procedure. Provided an applicant contests the interpretation or application of Community law made by OHIM, the points of law examined by OHIM can be debated again in an action before the Court. This forms part of the review by the courts to which the decisions of OHIM are subject under Article 63 of Regulation No 40/94, according to which an action against decisions of the Boards of Appeal may be brought in particular on grounds of infringement of the Treaty, of that regulation or of any rule of law relating to their application.

(see paras 26, 29)

3. From the point of view of the English-speaking public taken as a whole, the word sign CARGO PARTNER in respect of which registration as a Community trade mark is sought for 'Transport; packaging and storage of goods; travel arrangement' in Class 39 of the Nice Agreement is, in relation to the product concerned, devoid of any distinctive character within the meaning of Article 7(1)(b) of Regulation No 40/94 on the Community trade mark, since the terms 'cargo' and 'partner' are generic words which are accordingly not capable of distinguishing the applicant's services from those of other undertakings and there are no elements which indicate that in English the expression 'cargo partner' has, in common parlance, a meaning other than that of presenting the partner offering services of transport, packaging and storage of goods.

(see paras 50, 54, 56, 59)