

Case T-6/05

DEF-TEC Defense Technology GmbH

v

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

(Community trade mark — Opposition proceedings — Application for figurative mark FIRST DEFENSE AEROSOL PEPPER PROJECTOR — Relative ground for refusal — Article 8(3) of Regulation (EC) No 40/94 — Existence of trade mark proprietor's consent)

Judgment of the Court of First Instance (Second Chamber), 6 September 2006 II - 2673

Summary of the Judgment

*Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Absence of trade mark proprietor's consent to registration applied for by an agent or representative in his own name
(Council Regulation No 40/94, Art. 8(3))*

Article 8(3) of Regulation No 40/94 on the Community trade mark under which, upon opposition by the proprietor of the trade mark, a trade mark is not to be registered where an agent or representative of the proprietor applies for registration thereof in his own name and without the proprietor's consent, which must be clear, specific and unconditional, is designed to prevent the misuse of a mark by the trade mark proprietor's agent, as the agent may exploit the knowledge and experience acquired during its business relationship with the proprietor and therefore improperly benefit from the effort and investment which the trade mark proprietor himself made.

Where there is a change of proprietor of the trade mark between the day on which the consent was given and the day on which the application for registration of the mark was made, it is for the Office for Harmonization in the Internal Market (Trade Marks and Designs) to consider whether the consent survived that change and whether, on the day of the application for registration of the mark, the new proprietor was still bound by that consent.

(see paras 38, 40, 49, 50)