

## Case T-360/03

**Frischpack GmbH & Co. KG**

**v**

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

(Community trade mark — Three-dimensional mark — Shape of a cheese box —  
Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94 —  
Distinctive character)

Judgment of the Court of First Instance (Fifth Chamber), 23 November 2004 II - 4099

### Summary of the Judgment

*Community trade mark — Appeals procedure — Appeals before the Community judicature —  
Challenging the Board of Appeal's definition of the relevant public for the purposes of the  
examination of the distinctive character of the mark applied for — Change in the subject-  
matter of the dispute — None*

*(Rules of Procedure of the Court of First Instance, Art. 135(4); Council Regulation No 40/94,  
Art. 7(1)(b))*

It is for the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to ascertain the relevant public in the course of its examination of distinctive character, within the meaning of Article 7(1)(b) of Regulation No 40/94 on the Community trade mark, of a sign for which registration as a mark is sought.

the examination of the distinctive character of the mark applied for in breach of Article 135(4) of the Rules of Procedure, the applicant is not asking the Court to rule on questions which are different from those brought before the Board of Appeal.

By challenging the Board of Appeal's definition of the relevant public for the purposes of

(see paras 34-35)