

Case T-216/02

Fieldturf Inc.

v

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

(Community trade mark — Word mark LOOKS LIKE GRASS... FEELS LIKE GRASS... PLAYS LIKE GRASS — Absolute ground for refusal — Article 7(1)(b) and Article 73 of Regulation (EC) No 40/94 — Refusal to register)

Judgment of the Court of First Instance (Fourth Chamber), 31 March 2004 II - 1025

Summary of the Judgment

- 1. Community trade mark — Definition and acquisition of Community trade mark — Absolute grounds for refusal — Marks devoid of distinctive character — Word mark 'LOOKS LIKE GRASS... FEELS LIKE GRASS... PLAYS LIKE GRASS' — Goods and services inseparably linked
(Council Regulation No 40/94, Art. 7(1)(b))*

2. *Community trade mark — Procedural requirements — Decisions of the Office — Respect for the rights of the defence*
(Council Regulation No 40/94, Art. 73)

1. The word mark LOOKS LIKE GRASS... FEELS LIKE GRASS... PLAYS LIKE GRASS, registration of which is sought in respect of synthetic surfaces and the installation services for that product, is devoid of distinctive character within the meaning of Article 7(1)(b) of Regulation No 40/94 in that that mark is not such as to be perceived immediately as an indication of the commercial origin of the goods or services in question, but as a mere promotional slogan.

In respect of the goods in question, the mark is merely the concatenation, which is commonplace, of three unambiguous statements concerning the properties of those goods which therefore directly informs the relevant public that those goods have qualities similar to those of natural grass. It cannot be ruled out that, with regard to the services in question, the mark applied for may be distinctive and so a solution which was common to the goods and services specified in the trade mark application shall apply since the application makes no distinction and in particular does not seek to be confined to the services alone should it be rejected in respect of the goods and above all since those goods and services

are inseparably linked since the purpose of those services can only be the installation of those goods.

(see paras 30, 33, 35)

2. There is no breach of Article 73 of Regulation No 40/94 on the Community trade mark, which provides that the decisions of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) are to be based only on reasons on which the parties concerned have had an opportunity to present their comments, where a Board of Appeal of OHIM failed to inform a party of the results of an internet search which it carried out and referred to in its decision since the Board of Appeal arrived at its findings as a result of reasoning independent of the reference to that search and that reference was made only to confirm the accuracy of those findings.

(see paras 39-42)