

Case T-273/02

Krüger GmbH & Co. KG

v

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

(Community trade mark — Opposition proceedings — Application for Community word mark CALPICO — Earlier national mark CALYPSO — Article 8(1)(b) of Regulation (EC) No 40/94 — Right to be heard)

Judgment of the Court of First Instance (Fourth Chamber), 20 April 2005 . . . II - 1274

Summary of the Judgment

1. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Word marks CALPICO and CALYPSO
(Council Regulation No 40/94, Art. 8(1)(b))*

2. *Community trade mark — Appeals procedure — Boards of Appeal — Office on administrative body — Right of the parties to a fair 'hearing' — None*
(Council Regulation No 40/94, Arts 60 to 62)
3. *Community trade mark — Decisions of the Office — Observance of the rights of the defence — Scope of the principle*
(Council Regulation No 40/94, Art. 73)

1. There is, for the average German consumer, no likelihood of confusion between the word sign CALPICO, for which registration as a Community trade mark is sought in respect of 'mineral and aerated waters and other non-alcoholic drinks, in particular physiologically functional drinks; fruit drinks and fruit juices as well as beverages with a fruit juice base; syrups and other preparations for making beverages' in Classes 29, 30 and 32 within the meaning of the Nice Agreement, and the word mark CALYPSO, registered earlier in Germany in respect of 'fruit powders and non-alcoholic fruit preparations for making non-alcoholic beverages (all the aforesaid goods also in instant form)' in Class 32 of that Agreement, in so far as, despite the fact that the goods designated by the conflicting marks are partly identical and partly highly similar, the visual difference and the clear aural and conceptual differences between the conflicting marks make it possible to preclude any likelihood of confusion between those marks on the part of the relevant public and that is so even if the

target consumer pays no particular attention to them.

(see paras 45, 54-55)

2. The possibility of relying on a right to a fair 'hearing', within the meaning of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, before the Boards of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) is precluded, since proceedings before the Boards of Appeal are administrative and not judicial in nature.

(see para. 62)

3. Although the right to be heard, as laid down by the second sentence of Article 73 of Regulation No 40/94 on the Community trade mark, covers all the factual and legal evidence which forms the basis for the act of making the decision taken by the Office for Harmonisation in the Internal Market (Trade Marks and Designs), it does not apply to the final position which the administration intends to adopt.

(see para. 65)