

ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)

27 July 2004^{*}

In Case T-131/03,

Gerolsteiner Brunnen GmbH & Co., established in Gerolstein (Germany),
represented by A. Ebert-Weidenfeller, lawyer,

applicant,

v

Office for Harmonisation in the Internal Market (Trade Marks and Designs)
(OHIM), represented by U. Pfleghar and G. Schneider, acting as agents,

defendant,

^{*} Language of the case: German.

the other party to the procedure before the Board of Appeal of the OHIM, intervening before the Court of First Instance, being

Kerry Group plc, established in Tralee (Ireland), represented by P. Neuwald, lawyer,

APPEAL against the decision of the First Board of Appeal of the OHIM of 13 February 2003 (Case R 275/2002-1), concerning opposition proceedings between Gerolsteiner Brunnen GmbH & Co. and Kerry Group plc,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Second Chamber),

composed of: J. Pirrung, President, A.W.H. Meij and S.S. Papasavvas, Judges,

Registrar: H. Jung,

makes the following

Order

- ¹ On 3 January 1997, Kerry Group plc (‘the intervener’) submitted an application for a Community trade mark to the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) pursuant to Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), as amended.

- 2 On 12 June 1998, Gerolsteiner Brunnen GmbH & Co. filed a notice of opposition to registration of the trade mark sought. The opposition was rejected by decision of the Opposition Division of OHIM of 29 January 2002, and the appeal against that decision was also rejected by a decision of the First Board of Appeal of OHIM of 13 February 2003.
- 3 By application lodged at the Registry of the Court of First Instance on 17 April 2003, Gerolsteiner Brunnen GmbH & Co. (hereinafter 'the applicant' or 'Gerolsteiner Brunnen') applied to the Court of First Instance for the annulment of that latter decision and for an order that OHIM pay the costs.
- 4 By letter lodged at the Registry of the Court of First Instance on 5 December 2003, the applicant's representative informed the Court of First Instance that the applicant had transferred the earlier trade mark on which the opposition was based to Sinziger Mineralbrunnen GmbH. He also indicated that that company had instructed him to represent it before the Court of First Instance and that, as the new owner of the trade mark, it was seeking leave to be substituted for Gerolsteiner Brunnen as applicant in the present dispute.
- 5 By letter of 10 December 2003, the parties to the dispute were invited to submit their observations on the request of Sinziger Mineralbrunnen.
- 6 By letters lodged at the Registry of the Court of First Instance on 17 and 23 December 2003 respectively, the defendant and the intervener indicated that they had no objection to Sinziger Mineralbrunnen being authorised to substitute itself for the applicant.

- 7 By letter lodged at the Registry of the Court of First Instance on 8 January 2004, the applicant signified its agreement that Sinziger Mineralbrunnen be substituted for it.
- 8 As the Court of First Instance has held in its order of 5 March 2004 in Case T-94/02 *BOSS v OHIM — Delta Holding (BOSS)* [2004] ECR II-813 where an intellectual property right at issue in the dispute is transferred, the new owner of that right, claiming through the party before the Board of Appeal, may be authorised by order to substitute itself for the transferor in the proceedings before the Court of First Instance, where the former owner of the right has no objection and the Court of First Instance, having heard the other parties to the action, considers it appropriate.
- 9 In the absence of any provisions in the Statute of the Court of Justice and the Rules of Procedure of the Court of First Instance expressly governing the substitution of one party for another, the provisions of Articles 115 and 116 of the Rules of Procedure should be applied by analogy. In particular, the party claiming through the previous litigant must accept the dispute in the state in which it is at the time of the substitution.
- 10 In this case, Gerolsteiner Brunnen, the former owner of the intellectual property right on which the opposition to the application for a Community trade mark is based, has declared its agreement with the substitution, and neither OHIM nor the intervener have raised any objections in that regard. In those circumstances, Sinziger Mineralbrunnen should be authorised to substitute itself for Gerolsteiner Brunnen as applicant in this case.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby orders:

1. **Sinziger Mineralbrunnen GmbH is authorised to substitute itself for Gerolsteiner Brunnen GmbH & Co. as applicant.**
2. **Costs are reserved.**

Delivered in Luxembourg, 27 July 2004.

H. Jung

Registrar

J. Pirrung

President