

Case T-192/04

Flex Equipos de Descanso, SA

v

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

(Community trade mark — Opposition proceedings — Application for Community word mark LURA-FLEX — Earlier national figurative marks containing the word element 'flex' — Submission to the Opposition Division out of time of translations of documents provided in support of the reputation of earlier marks — Obligation on the Board of Appeal to assess the need to take account of the documents translated)

Judgment of the Court of First Instance (Fourth Chamber), 11 July 2007 . . . II - 2414

Summary of the Judgment

1. *Community trade mark — Observations of third parties and opposition — Examination of the opposition*
(Council Regulation No 40/94, Art. 74(2); Commission Regulation No 2868/95, Art. 1, Rules 16(3), 17(2) and 20(2))

2. *Community trade mark — Appeals procedure — Appeal brought against a decision of the Opposition Division of the Office — Examination by Board of Appeal — Scope (Council Regulation No 40/94, Art. 74(2))*

1. It may be inferred from the reference in Rule 16(3) of Regulation No 2868/95 implementing Regulation No 40/94 on the Community trade mark to Rule 20(2), on the one hand, and in Rule 17(2) to Rule 16(3) on the other, that the period set by the Opposition Division pursuant to Rule 20(2) for the submission of the particulars of the facts, evidence and arguments in support of the opposition also applies to translations in the language of the opposition proceedings of the evidence of the reputation of the opponent's earlier marks.

Marks and Designs) may disregard it, pursuant to that provision.

(see paras 50, 61)

Where the latter does not provide the Opposition Division with translations, in the language of the proceedings, of the evidence and documents supporting the reputation of its earlier marks until after the expiry of that period, it is to be regarded as having failed to submit that evidence in due time, within the meaning of Article 74(2) of Regulation No 40/94, so that the Office for Harmonization in the Internal Market (Trade

2. When hearing an action against a decision dismissing an opposition to the registration of a sign as a Community trade mark, the Board of Appeal has a wide discretion under Article 74(2) of Regulation No 40/94 on the Community trade mark to decide, while giving reasons for its decision in that regard, whether or not to take account of facts and evidence before it which were submitted out of time before the Opposition Division. Taking such facts or evidence into account is particularly likely to be justified where, first, the material which has been produced late is, on the face of it, likely to be relevant to the outcome of the opposition and, second, the stage of the proceedings at

which that late submission takes place and the circumstances surrounding it do not argue against such matters being taken into account.

A Board of Appeal will therefore err in law if it declines from the outset to exercise its discretion in deciding whether or not to take account of such evidence and documents.

(see paras 62, 63, 67)