

Case T-6/01

Matratzen Concord GmbH

v

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

(Community trade mark — Opposition — Relative grounds for refusal —
Similarity between two trade marks — Likelihood of confusion —
Article 8(1)(b) of Regulation (EC) No 40/94 — Application for a figurative
Community trade mark containing the word ‘Matratzen’ —
Earlier word trade mark MATRATZEN)

Judgment of the Court of First Instance (Fourth Chamber), 23 October
2002 II-4339

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 identical or similar earlier mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Assessment criteria (Council Regulation No 40/94, Art. 8(1)(b) and (2)(a)(ii))*

2. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an identical or similar earlier mark registered for identical or similar goods or services — Similarity between the marks concerned — Assessment criteria — Complex trade mark (Council Regulation No 40/94, Art. 8(1)(b))*
3. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an identical or similar earlier mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — ‘Matratzen Markt Concord’ and ‘Matratzen’ (Council Regulation No 40/94, Art. 8(1)(b))*
4. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an identical or similar earlier mark registered for identical or similar goods or services — Earlier mark consisting of a descriptive word in a language other than that of the Member State of registration — Breach of the principle of the free movement of goods — None (Arts 28 EC and 30 EC; Council Regulation No 40/94, Art. 8(1)(b))*

1. As is clear from Article 8(1)(b) of Regulation No 40/94 on the Community trade mark, a trade mark may not be registered if, because of its identity with or similarity to the earlier trade mark and the identity or similarity of the goods or services covered by the two trade marks, there is a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected. Moreover, under Article 8(2)(a)(ii) of Regulation No 40/94, ‘earlier trade marks’ means trade marks registered in a Member State with a date of application for registration which is earlier than the date of application for registration of the Community trade mark.

In that regard, the risk that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion, which must be assessed globally, with all factors relevant to the circumstances of the case being taken into account. That global assessment entails a certain interdependence between the factors taken into account and, in particular, the similarity between the trade marks and between the goods or services covered, in which context a lesser degree of similarity between those goods or services may be offset by a greater degree of similarity between the marks, and vice versa.

(see paras 22-25)

2. Two marks are similar, for the purposes of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark, when, from the point of view of the relevant public, they are at least partially identical as regards one or more relevant aspects. The visual, aural and conceptual aspects are relevant, since the assessment of the similarity between two marks must be based on the overall impression created by the marks, in light, in particular, of their distinctive and dominant components.

Consequently, a complex trade mark cannot be regarded as being similar to another trade mark which is identical or similar to one of the components of the complex mark, unless that component forms the dominant element within the overall impression created by the complex mark. That is the case where that component is likely to dominate, by itself, the image of that mark which the relevant public keeps in mind, with the result that all the other components of the mark are negligible within the overall impression created by it.

(see paras 30, 32-33)

3. From the point of view of the Spanish public, there exists a visual and aural similarity between the figurative mark

‘Matratzen Markt Concord’, the registration of which as a Community trade mark is sought in respect of certain goods and services in Classes 10 (cushions, pillows, etc.), 20 (mattresses etc.) and 24 (bed blankets etc.) of the Nice Agreement, and the word mark consisting of the word ‘Matratzen’, which was registered earlier in Spain in respect of products in Class 20 (all kinds of furniture, including mattresses) of that agreement.

Since the degree of similarity between the trade marks in question and the degree of similarity between the goods covered by them are sufficiently high, there is a likelihood of confusion between the trade marks in question, so that the trade mark applied for is caught by Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark.

(see paras 44, 48, 50)

4. It is not contrary to the principle of the free movement of goods (Article 28 EC) for it to be possible for a national trade mark consisting of a descriptive word in a language other than that of

the Member State of registration to be opposed, on the basis of Article 8(1)(b) of Regulation No 40/94 on the Community trade mark, to an application for a similar Community trade mark.

Firstly, it in no way appears that the principle of the free movement of goods prohibits a Member State from registering such a sign as a national trade mark and, secondly, the Community legislature did not disregard

Articles 28 EC and 30 EC when providing that a Community trade mark applied for must not be registered if there exists a likelihood of confusion between that mark and an earlier trade mark registered in a Member State, irrespective of whether the latter mark has a descriptive character in a language other than that of the Member State of registration.

(see paras 54, 56)