

Case T-286/02

Oriental Kitchen SARL

v

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

(Community trade mark — Opposition proceedings — Application for the
Community word mark KIAP MOU — Earlier national word marks MOU —
Refusal to register)

Judgment of the Court of First Instance (Second Chamber), 25 November
2003 II-4956

Summary of the Judgment

1. *Community trade mark — Appeals procedure — Appeals before the Community
judicature — Assertion by the applicant for a trade mark facing opposition that he
intends to use it for only some of the products referred to in the application — Not
necessary to take into account
(Council Regulation No 40/94, Art. 8(1)(b))*

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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 — Word mark consisting of two words*
(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 — ‘KIAP MOU’ and ‘MOU’*
(Council Regulation No 40/94, Art. 8(1)(b))

1. For the purposes of applying Article 8(1)(b) of Regulation No 40/94 on the Community trade mark, the likelihood of confusion must be assessed in relation to all the goods specified in the trade mark application. In order to be taken into consideration, a restriction of the list of goods or services specified in a Community trade mark application must be made in accordance with certain detailed rules, on application for amendment of the application filed, in accordance with Article 44 of Regulation No 40/94 and Rule 13 of Regulation No 2868/95 implementing Regulation No 40/94.

intends to use the mark applied for only in relation to some of the goods referred to in the trade mark application.

(see paras 29-30)

It is therefore not necessary to take account of a mere assertion that does not comply with those rules and according to which the applicant

2. Two marks are similar within the meaning of Article 8(1)(b) of Regulation 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. Those aspects are the visual, the aural and the conceptual, and the assessment of the similarity must be based on the overall impression created by the trade marks, bearing in mind, in particular, their distinctive and dominant components.

In that regard, it is necessary to make an initial analysis based on the premiss that, where one of the two words which alone constitute a word mark is identical, both visually and aurally, to the single word which constitutes an earlier word mark, and where those words, taken together or in isolation, have no conceptual meaning for the public concerned, the marks at issue, each considered as a whole, are normally to be regarded as similar.

(see paras 38-39)

3. For the public made up of end users of everyday food products in the United Kingdom, there is visual and aural similarity between the word mark 'KIAP MOU', registration of which as a Community trade mark has been applied for in relation to food products in Classes 29 and 30 of the Nice

Classification, presented in general terms, and the word mark 'MOU', previously registered in the United Kingdom for identical or at least similar products falling under the same classes of that classification, so that the relevant public is likely to think that the food products bearing the word mark applied for may come from the undertaking which is proprietor of the earlier trade mark.

In so far as the degree of similarity between the trade marks at issue is sufficient for it to be considered that there exists a likelihood of confusion between them, the trade mark applied for falls within the provisions of Article 8(1)(b) of Regulation No 40/94 of the Community trade mark.

(see paras 37, 40-45)