

Case T-86/05

K & L Ruppert Stiftung & Co. Handels-KG

v

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

(Community trade mark — Opposition proceedings — Application for the figurative mark CORPO LIVRE — National and international word marks LIVRE — Proof of use of the earlier marks submitted out of time)

Judgment of the Court of First Instance (Second Chamber), 12 December 2007 II - 4926

Summary of the Judgment

1. *Community trade mark — Procedural provisions — Time-limits (Commission Regulation No 2868/95, Art. 71(1) and (2))*

2. *Community trade mark — Procedural provisions — Opposition proceedings*
(Commission Regulation No 2868/95, Rule 22(1))

1. It follows from the second sentence of Rule 71(1) of Regulation No 2868/95 implementing Regulation No 40/94 on the Community trade mark that extension of the time-limits specified by the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) is not automatic, but depends on circumstances which are specific to the individual case and which make it appropriate to grant an extension, as well as on the submission of a request for an extension. That holds especially true in relation to inter partes proceedings, in which an advantage granted to one of the parties constitutes a disadvantage for the other. In such cases, the Office must therefore ensure that it remains impartial with regard to the parties.

make it appropriate to grant an extension, those circumstances must be specified in the related request.

Moreover, it is apparent from the overall scheme of Rule 71 that paragraph 2, which provides that, where there are two or more parties, the Office may extend the period specified, subject to the agreement of the other parties, does not lay down a single condition sufficient for the extension of a period specified; rather, it adds another condition to those set out in paragraph 1 that the extension must be requested by the party concerned before the expiry of the period specified and that it must be appropriate under the circumstances.

It is for the party requesting an extension to plead the circumstances making it appropriate, since it is in the interests of that party that the extension is sought and may be granted. Furthermore, where those circumstances are specific to the party requesting the extension, that party is the only one who can provide the Office with the relevant information regarding them. Accordingly, for the Opposition Division to be able to assess the existence of circumstances which

(see paras 21, 22, 55, 56)

2. It is apparent from the second sentence of Rule 22(1) of Regulation No 2868/95 implementing Regulation No 40/94 on the Community trade mark that sub-

mission of proof of use of the earlier mark after the expiry of the period specified for that purpose results, in principle, in the rejection of the opposition without the Office having a discretion in that regard. Genuine use of the

earlier mark is a preliminary matter which must accordingly be settled before a decision is taken on the opposition proper.

(see para. 49)