

## Case T-269/02

**PepsiCo, Inc.**

**v**

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

(Community trade mark — Opposition proceedings — Application for Community word mark RUFFLES — Earlier national trade mark RIFFELS — Even earlier national trade mark RUFFLES — Coexistence and equivalence between national trade marks and Community trade marks)

Judgment of the Court of First Instance (Fifth Chamber), 21 April 2005 . . . II - 1343

### Summary of the Judgment

*Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Possession by the trade mark applicant of a national mark identical to the one applied for and preceding the opponent's national mark — Effect*

*(Council Regulation No 40/94, Art. 8)*

In the context of opposition proceedings brought against registration of a Community mark pursuant to Article 42 et seq. of Regulation No 40/94, the mere possession by the Community trade mark applicant of a national mark which precedes the opponent's national mark and is identical to the Community mark applied for is not sufficient reason for rejecting the opposition. The applicant must also prove that it has been successful in having the opponent's national mark cancelled by the competent national authorities.

registration of a Community trade mark, but only in cancellation proceedings brought in the Member State concerned. Moreover, although it is for the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to ascertain, on the basis of evidence which it is up to the opponent to produce, the existence of the national mark relied on in support of the opposition, it is not for it to rule on a conflict between that mark and another mark at national level, such a conflict falling within the competence of the national authorities.

The validity of a national trade mark may not be called in question in proceedings for

(see paras 25-26)