

Case T-135/04

GfK AG

v

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

(Community trade mark — Application for the Community word mark Online Bus — Earlier figurative trade mark composed of the word 'BUS' and a figure made up of three interlaced triangles — Genuine use of the earlier mark — Article 15(2)(a) and Article 43(2) and (3) of Regulation (EC) No 40/94 — Likelihood of confusion — Article 8(1)(b) of Regulation No 40/94)

Judgment of the Court of First Instance (Fourth Chamber), 24 November 2005 II - 4867

Summary of the Judgment

- 1. Community trade mark — Observations of third parties and opposition — Examination of the opposition — Proof of use of the earlier mark — Use in a form differing in elements which do not alter the distinctive character of the mark
(Council Regulation No 40/94, Arts 15(2)(a) and 43(2) and (3))*

2. *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 — Likelihood of confusion with the earlier mark — Word mark Online Bus and figurative mark including the word 'BUS'*

(Council Regulation No 40/94, Art. 8(1)(b))

1. By virtue of the combined application of Article 15(2)(a) and Article 43(2) and (3) of Regulation No 40/94 on the Community trade mark, proof of genuine use of an earlier national or Community trade mark on which opposition proceedings against an application for a Community trade mark are based also includes proof of use of the earlier mark in a form that differs in respect of elements which do not alter the distinctive character of that trade mark in the form registered.
2. There is a likelihood of confusion on the part of the German public between the word mark Online Bus, for which a Community trade mark application has been made for 'market research and market analysis' in Class 35 of the Nice Agreement, and the figurative mark including the word 'BUS', registered previously in Germany for, inter alia, 'business consultancy', in the same class. In the light of the high degree of similarity between the services in question and the high degree of oral similarity between the trade marks at issue, the mere visual difference between those trade marks created by the presence of the figurative element in the earlier mark is not such as to preclude a likelihood of confusion. The relevant consumer, faced by the trade marks in question, will remember only the word 'bus', which is present in both trade marks and dominates their pronunciation.

As regards an earlier national trade mark, the provisions of the national law of the Member State where that mark is registered are not relevant for the purposes of assessing such a use.

(see paras 30-31)

(see para. 80)