

Case T-252/04

Caviar Anzali SAS

v

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

(Community trade mark — Opposition proceedings — Application for the figurative Community trade mark ASETRA — Earlier national and international figurative trade mark CAVIAR ASTARA — Relative grounds for refusal — Likelihood of confusion — Rejection of the opposition on the ground of failure to produce documents within the time-limits granted — Evidence produced for the first time before the Board of Appeal — Admissibility — Extent of the examination conducted by the Boards of Appeal — Articles 62 and 74 of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (First Chamber), 11 July 2006 . . . II - 2118

Summary of the Judgment

1. *Community trade mark — Appeals procedure
(Council Regulation No 40/94, Arts 62(1) and 74(2))*

2. *Community trade mark — Appeals procedure*
 (Council Regulation No 40/94, Arts 62(1) and 74(1) and (2))

1. It follows from the continuity in terms of functions between the departments of the Office for Harmonization in the Internal Market (Trade Marks and Designs) that, in the review of decisions taken by the departments of the Office hearing the application at first instance that the Boards of Appeal must undertake, the Boards of Appeal are required to base their decision on all the matters of fact and of law which the parties concerned introduced either in the proceedings before the department which heard the application at first instance or in the appeal.

Concerning *inter partes* proceedings, the continuity in terms of their functions between the various departments of the Office does not mean that a party which, before the department hearing the application at first instance, did not produce certain matters of fact or of law within the time-limits laid down before that department would not be entitled, under Article 74(2) of Regulation No 40/94, to rely on those matters before the Board of Appeal. On the contrary, the continuity in terms of functions means that such a party is entitled to rely on those matters before the Board of Appeal.

(see paras 31-33)

Thus, the Boards of Appeal may, subject only to Article 74(2) of Regulation No 40/94 on the Community trade mark, allow the appeal on the basis of new facts relied on by the party which has brought the appeal or on the basis of new evidence adduced by that party. The review exercised by the Boards of Appeal is not limited to the lawfulness of the contested decision, but, by virtue of the devolutive effect of the appeal proceedings, it requires a reappraisal of the dispute as a whole, since the Boards of Appeal must re-examine in full the initial application and take into account evidence produced in due time.

2. The rule laid down in Article 74(1) of Regulation No 40/94 on the Community trade mark, according to which the Office for Harmonization in the Internal Market (Trade Marks and Designs) examines the facts of its own motion, makes provision for two limitations. First of all, in proceedings relating to relative grounds for refusal of registration, the Office is restricted in this examination to the facts relating to the

evidence and arguments provided by the parties and the relief sought. Secondly, Article 74(2) gives the Office the option to disregard evidence which is not submitted 'in due time' by the parties.

It follows from the continuity in terms of functions which characterises the relationship between the various departments of the Office that the notion of 'due time' must be interpreted in appeal proceedings before a Board of Appeal as referring to the time-limit applicable to the lodging of an appeal and to the time-limits granted in the course of those proceedings. Since this notion applies in

each of the proceedings pending before the Office, the expiry of the time-limits granted by the department hearing the application at first instance for producing evidence therefore has no bearing on the question whether the evidence has been produced 'in due time' before the Board of Appeal. The Board of Appeal is therefore required to take into consideration the evidence produced before it, irrespective of whether or not it has been produced before the Opposition Division.

(see paras 34, 35)