

## **Case T-149/06**

**Castellani SpA**

**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 CASTELLANI — Earlier national word marks  
CASTELLUM and CASTELLUCA — Relative ground for refusal — Likelihood of  
confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (First Chamber), 20 November 2007 II - 4758

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

For the average German consumer, there is no likelihood of confusion for the purposes of Article 8(1)(b) of Regulation No 40/94 on the Community trade mark between the figurative mark containing the word element 'castellani', registration of which as a Community trade mark is sought in respect of 'alcoholic beverages except beer, liqueur, sparkling wine and Champagne' in Class 33 of the Nice Agreement, and the word mark CASTELLUCA, previously registered in Germany for 'wines', in Class 33.

difference established between the word elements 'castellani' and 'castelluca' is sufficient to rule out any visual similarity between the competing signs.

As regards the phonetic comparison, the dissimilarities between the signs, due to the difference between the suffixes are sufficient for them to be distinguished aurally in German, in spite of the fact that the prefixes are the same.

Although: (i) the dominant element of the contested trade mark is its verbal element, namely the word 'castellani'; (ii) the word elements 'castellani' and 'castelluca' have a certain degree of visual similarity, since they are of the same length and the first seven letters are identical and placed in the same order ('c-a-s-t-e-l-l'); and (iii) the consumer's attention is often caught by the first part of words, the use of words meaning 'castle' is very common for the goods concerned, and in order to be able correctly to identify a wine whose name begins with one of those words, the consumer must examine the suffix attached to it very carefully. In the present case, the final letters of the conflicting signs, that is, 'a', 'n' and 'i' in the contested trade mark and 'u', 'c' and 'a' in the earlier mark, are different. Accordingly, in the overall visual assessment of the signs, the

As regards the conceptual comparison, it should be noted, first, that the use of a word meaning 'castle' is common in the wine sector, and that the German consumer is accustomed to seeing a large number of trade marks for wine whose name begins with 'Schloss', 'castello', 'château', 'castel' or 'castle' when purchasing wine in a specialist shop, a supermarket or a hypermarket or when choosing a wine from a wine list in a restaurant. He will therefore attach less significance to the prefix and closely examine the suffix of the mark on the bottle label. Secondly, the trade mark applied for contains an Italian family name, which will be recognised as such by the target public.

Thus, when making an overall assessment of the marks at issue, the visual, phonetic and conceptual differences between the conflicting signs are sufficient, in spite of the identical nature of the goods covered, to

preclude the resemblances between them giving rise to a likelihood of confusion on the part of the average German consumer.

(see paras 53-60)