

Case T-133/05

Gérard Meric

v

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

(Community trade mark — Opposition proceedings — Earlier national figurative and word marks PAM-PAM — Application for Community word mark PAM-PIM'S BABY-PROP — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 40/94))

Judgment of the Court of First Instance (Fifth Chamber), 7 September 2006 II - 2739

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 trade mark registered for identical or similar goods or services

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

There exists, for the average Spanish consumer, a likelihood of confusion between the word mark PAM-PIM'S BABY-PROP, the registration of which as a Community trade mark is sought for 'napkin-pants made out of paper or cellulose (disposable)' falling within Class 16 of the Nice Agreement and the word mark PAM-PAM, registered earlier as a Community trade mark for 'any ready-made clothing, in particular napkin pants, footwear', falling within Class 25 of that Agreement. First, as the goods designated by the earlier mark in question were, in particular, babies' nappies, they are included in the more general category covered by the trade mark application which covers both babies'

nappies and adults' nappies and, second, there are no conceptual differences capable of neutralising the visual and phonetic differences which exist between the signs concerned of such a kind that the relevant public could think that the goods covered by the trade mark applied for and those sold under the earlier mark come from the same manufacturer or, as the case may be, from manufacturers that are economically linked.

(see paras 36, 67, 77)