

## Case T-3/04

**Simonds Farsons Cisk plc**

**v**

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

(Community trade mark — Opposition procedure — Application for registration of a Community figurative mark containing the verbal element 'KINJI by SPA' — Earlier Community word mark KINNIE — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 — Article 73 of Regulation No 40/94)

Judgment of the Court of First Instance (Fifth Chamber), 24 November 2005 II - 4840

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### Summary of the Judgment

1. *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 — Similarity of the marks concerned — Criteria for assessment — Complex mark  
(Council Regulation No 40/94, Art. 8(1)(b))*

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 — Figurative mark containing the verbal element 'KINJI by SPA' and word mark KINNIE*

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

1. The global appreciation of the likelihood of confusion within the meaning of Article 8(1)(b) of Regulation No 40/94 on the Community trade mark must, as regards the visual, phonetic or conceptual similarity of the marks in question, be based on the overall impression given by those marks, bearing in mind, in particular, their distinctive and dominant components.

As regards the visual similarity, a compound trade mark cannot be regarded as being similar to another trade mark which is identical or similar to one of the components of the compound mark unless that component forms the dominant element within the overall impression created by the compound mark. That is the case where that component is likely to dominate, by itself, the image of that mark which the relevant public keeps in mind, with the result that all the other components of the mark are negligible within the overall impression created by it.

Where a sign consists of both figurative and verbal elements, it does not automatically follow that it is the verbal element which must always be considered to be dominant. The figurative element may occupy a position equivalent to the verbal element.

In addition, even in circumstances where two conflicting marks are composed of similar verbal elements that fact does not, by itself, support the conclusion that there is a visual similarity between the signs. The presence, in one of the signs, of figurative elements set out in a specific and original way can have the effect that the overall impression conveyed by each sign is different.

(see paras 38, 45-48)

2. There is no likelihood of confusion on the part of average European consumers between the figurative sign containing the verbal element 'KINJI by SPA', for which registration as a Community trade mark is sought in respect of 'Fruit pulp' and 'Mineral and aerated waters and other non-alcoholic drinks containing fruit juice; non-alcoholic fruit drinks; non-alcoholic fruit extracts, fruit juices, syrups and other preparations based on fruit, fruit extracts or fruit pulp for making beverages' within Classes 29 and 32 respectively of the Nice Agreement, and the word mark KINNIE registered previously as a Community trade mark in respect of 'non-alcoholic drinks; preparations for making bev-

erages' within Class 32 of the Nice Agreement, since there are important visual and conceptual differences between the conflicting marks which cancel out their phonetic similarity. Accordingly, although the goods covered by the marks in question are identical or very similar, the visual and conceptual differences between the signs provide sufficient grounds for taking the view that there is no likelihood of confusion on the part of the relevant public.

(see paras 35, 55, 62)