

Case T-363/04

Koipe Corporación, SL

v

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

(Community trade mark — Application for Community figurative mark ‘La Española’ — Opposition by the proprietor of the national and Community figurative marks ‘Carbonell’ — Rejection of the opposition — Dominant elements — Similarity — Likelihood of confusion — Power to alter decisions)

Judgment of the Court of First Instance (First Chamber), 12 September 2007 II - 3357

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 Spanish consumer, there is a risk of confusion between the figurative mark 'La Española', registration of which as a Community trade mark is sought in respect of 'edible oils and fats' within Class 29 of the Nice Agreement, and the figurative mark Carbonell previously registered in Spain in respect of 'pure olive oil' and 'olive oil'.

The similarity of the figurative elements of the conflicting trade marks, both as regards the colour schemes and the drawings is more significant than small differences which become apparent only after a detailed and thorough examination. There is, moreover, a conceptual link between the marks at issue which, although weak, is linked to the nature and origin of the goods protected. The elements common to the two marks at issue, seen as a whole, produce an overall visual

impression of great similarity, since the La Española mark reproduces very precisely the essence of the message and the visual impression given by the Carbonell mark: the woman dressed in traditional clothes, seated in a certain manner; close to an olive branch with an olive grove in the background, the overall image consisting of an almost identical arrangement of spaces, colours, places for brand names and style of lettering. That likelihood of confusion is not diminished by the existence of the different word element since the word element of the mark applied for has a very weak distinctive character, given that it refers to the geographical origin of the goods.

(see paras 100-103, 105)