

Case T-407/05

Société anonyme des eaux minérales d'Évian (SAEME)

v

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

(Community trade mark — Opposition proceedings — Application for figurative Community trade mark REVIAN's — Earlier non-Community trade marks evian — Late submission of the translation of the registration certificate for an earlier mark — Discretion granted by Article 74(2) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (First Chamber), 6 November 2007 II - 4388

Summary of the Judgment

1. *Community trade mark — Observations of third parties and opposition — Examination of the opposition*
(Commission Regulation No 2868/95, Art. 1, Rules 17(2) and 20(3))

2. *Community trade mark — Appeals procedure*
 (Council Regulation No 40/94, Arts 42(3), 59 and 74(2))

1. Rule 17(2) of Regulation No 2868/95 implementing Regulation No 40/94 on the Community trade mark, according to which the evidence submitted in support of an opposition must be submitted in the language of the opposition proceedings or accompanied by a translation into that language, is justified by the need to observe the principle of the right to be heard and to ensure equality of arms between the parties in inter partes proceedings.

already have before it. Finally, although the evidence stems from the registration certificates and not from a translation of them, the fact remains that if that evidence is to be taken into account it must comply with the language requirements imposed by Rule 17(2) of the implementing regulation.

(see paras 35-37)

Whilst it is true that the opposing party is not in any way obliged to provide a full translation of the registration certificates for the earlier trade marks, that does not mean that the Opposition Division is obliged to take into account, when considering the substance of the opposition, registration certificates provided in a language other than that of the opposition proceedings. In the absence of a translation of the registration certificates into the language of the proceedings, the Opposition Division may lawfully reject the opposition as unfounded unless, in accordance with Rule 20(3) of the implementing regulation, it can give a ruling on it on the basis of the evidence which it may

2. It is apparent from the wording of Article 74(2) 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) (OHIM) may disregard facts or evidence which are not submitted in due time by the parties concerned that, as a general rule and unless otherwise specified, the submission of facts and evidence by the parties remains possible after the expiry of the time-limits to which such submission is subject under the provisions of Regula-

tion No 40/94, and that the Office is in no way prohibited from taking account of facts and evidence which are submitted or produced late.

However, it is equally apparent from that wording that a party has no unconditional right to have facts and evidence submitted out of time taken into consideration by the Office. In stating that the latter 'may', in such a case, decide to disregard facts and evidence, Article 74(2) of Regulation No 40/94 grants the Office a wide discretion to decide whether or not to take such information into account, while nevertheless being required to give reasons for its decision in that regard. Where the Office is called upon to give judgment in the context of opposition proceedings, taking such facts or evidence into account is particularly likely to be justified where the Office considers, first, that the material which has been produced late is, on the face of it, likely to be relevant to the outcome of the opposition brought

before it and, second, that the stage of the proceedings at which that late submission takes place and the circumstances surrounding it do not preclude such matters being taken into account.

Moreover, Article 59 of Regulation No 40/94, which lays down the conditions for bringing an appeal before the Board of Appeal, cannot be interpreted as starting a new time-limit for the person bringing such an appeal in which to submit facts and evidence in support of his opposition. Unlike Article 42(3) of Regulation No 40/94, Article 59 does not refer to the submission of facts or evidence, but only to the filing, within a time-limit of four months, of a written statement setting out the grounds of appeal.

(see paras 52, 53, 55-58)