

## Case T-35/04

**Athinaiki Oikogeniaki Artopoiia AVEE**

**v**

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

(Community trade mark — Opposition proceedings — Earlier word mark FERRERO — Application for Community figurative trade mark containing the verbal element ‘FERRÓ’ — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Third Chamber), 15 March 2006 . . . II - 787

### 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))*

There is, for the average German consumer, a likelihood of confusion between the figurative sign containing the verbal element 'FERRÓ', the registration of which as a Community trade mark is sought for 'Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, biscuits, pastry and confectionery, ices, honey, syrup, yeast, baking powder, salt, mustard, all kinds of bread preparations, pepper, vinegar, sauces (condiments), ice, treacle' in Class 30 of the Nice Agreement, and the word mark FERRERO registered earlier in Germany for

goods in the same class, since, first, the goods covered by the trade marks in question are partly identical and partly similar, and, second, the comparison between the dominant verbal element of the mark applied for, 'ferró', and that forming the earlier word mark, 'ferrero', reveals a certain degree of visual and phonetic similarity between them.

(see paras 43, 44, 53, 62)