

Case T-20/02

Interquell GmbH

v

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

(Community trade mark — Application for Community figurative and word mark HAPPY DOG — Earlier national word mark HAPPIDOG — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Fourth Chamber), 31 March 2004 II - 1004

### Summary of the Judgment

- 1. Community trade mark — Definition and acquisition of 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 — Likelihood of confusion with the earlier mark — Word and figurative mark 'HAPPY DOG' and word mark 'HAPPIDOG'*

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

2. *Community trade mark — Effects of Community trade mark — Limitation — Article 12 of Regulation No 40/94 — Subject-matter — Not applicable to the procedure for registration*

(Council Regulation No 40/94, Art. 12)

1. There is a likelihood of confusion, on the part of the average consumer in the United Kingdom, between the word and figurative mark HAPPY DOG, for which registration as a Community trade mark is sought for 'foodstuffs for dogs' falling within Class 31 of the Nice Agreement, and the word mark HAPPIDOG, registered earlier in the United Kingdom for the same goods.

the argument that the expression 'happy dog' is descriptive when used in relation to foodstuffs for dogs, with the result that the earlier word mark would itself be regarded as being distinctive only to a small degree. As the factors relevant to the assessment of the likelihood of confusion are interdependent, the fact that the goods concerned are identical and that there is a high degree of similarity between the conflicting signs is sufficient for a finding that that likelihood exists.

The conflicting signs do have the same conceptual content in that they suggest to the relevant public that, by eating the goods, dogs will become happy. Given that those goods are identical, that the signs in question are conceptually similar, and that the signs are phonetically identical, visual differences between the signs are incapable of ruling out a likelihood of confusion on the part of that public.

(see paras 42, 44-46)

2. Article 12 of Regulation No 40/94 on the Community trade mark, concerning limitation of the effects of a trade mark, is not applicable to the procedure for registration of a trade mark. That provision concerns the limitations on the right conferred by a Community trade mark on its proprietor with respect to use in the course of trade. Thus, an alleged infringer of the rights of the proprietor of a Community trade mark composed of terms designating the quality or other characteristics of

The likelihood of confusion cannot, moreover, be called into question by

the goods concerned may, where appropriate, rely on that article as a defence against any such infringement proceedings. Account cannot therefore be taken of Article 12 during the procedure for registration of a trade mark because it does not entitle third parties to use such terms as a trade mark but merely ensures that they may use them in a descriptive manner, that is to say, as indications concerning the

quality or other characteristics of the goods, subject to the condition that they use them in accordance with honest practices in industrial or commercial matters.

(see paras 55, 56)