

Case T-8/02

Zapf Creation AG

v

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

(Community trade mark — Opposition — Amicable settlement — No need to adjudicate)

Order of the Court of First Instance (Fourth Chamber), 26 February 2003 II - 281

Summary of the Order

Community trade mark — Appeals procedure — Action against the decision upholding the opposition to an application for a trade mark — Amicable settlement between the applicant and the other party to the proceedings before the Office — Action rendered devoid of purpose — No need to adjudicate — Costs awarded against the applicant (Rules of Procedure of the Court of First Instance, Arts 87(6) and 113; Council Regulation No 40/94, Art. 63)

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An amicable settlement concluded between a person who has filed a Community trade mark application with the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and the proprietor of an earlier mark that precludes registration of the mark claimed renders an action brought by the applicant against a decision of the Board of Appeal of the Office upholding the opposition to the trade mark application devoid of purpose, pursuant to Article 113 of the Rules of Procedure, such that there is no further need for the Court of First Instance to adjudicate.

With regard to deciding on costs under Article 87(6) of the Rules of Procedure, where the reason why an action has not proceeded to judgment is because of the amicable settlement reached between the applicant and the other party to the proceedings before the Office and not any agreement entered into by the applicant and the defendant in the proceedings before the Court of First Instance, the applicant must bear its own costs and those incurred by the Office.

(see paras 10-12)