

# Case T-308/01

Henkel KGaA

v

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

(Community trade mark — Regulation (EC) No 40/94 and Regulation (EC) No 2868/95 — Opposition procedure — Genuine use of earlier mark — Scope of the examination conducted by the Board of Appeal — Assessment of the evidence produced in the procedure before the Opposition Division)

Judgment of the Court of First Instance (Second Chamber), 23 September  
2003 . . . . . II-3255

### Summary of the Judgment

*Community trade mark — Appeal procedure — Appeal against a decision of the Opposition Division — Examination by the Board of Appeal — Scope (Council Regulation No 40/94, Arts 61(1) and 62(1))*

In appeal proceedings before the Boards of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) brought with a view to overturning a decision of the Opposition Division, the extent of the examination which the Board of Appeal must conduct is not, in principle, determined by the grounds relied on by the party who has brought the appeal, given the continuity, in terms of their functions, between the departments of the Office deciding on the application at first instance and the Boards of Appeal. Accordingly, even if the party who has

brought the appeal has not raised a specific ground of appeal, the Board of Appeal is none the less bound to examine whether or not, in the light of all the relevant matters of fact and of law, a new decision with the same operative part as the decision under appeal may be lawfully adopted at the time of the appeal ruling.

(see paras 25, 29)