

Case T-164/02

Kaul GmbH

v

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

(Community trade mark — Opposition proceedings — Application for Community word mark ARCOL — Earlier Community word mark CAPOL — Scope of the assessment conducted by the Board of Appeal — Assessment of evidence adduced before the Board of Appeal)

Judgment of the Court of First Instance (Fourth Chamber), 10 November 2004 II - 3809

Summary of the Judgment

Community trade mark — Appeals procedure — Appeal brought against a decision of the Office's Opposition Division — Assessment by the Board of Appeal — Scope (Council Regulation No 40/94, Art. 74)

II - 3807

It follows from the continuity in terms of their functions between the departments of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) that, within the scope of application of Article 74(1) in fine of Regulation No 40/94 on the Community trade mark, relating to relative grounds for refusal, the Board of Appeal is required to base its decision on all the matters of fact and of law which the party concerned introduced either in the proceedings before the department which heard the application at first instance or, subject only to Article 74(2), relating to facts or evidence not introduced in due time, in the appeal.

Thus, the continuity in terms of their functions between the various departments of the Office does not mean that a party which, before the department hearing the application at first instance, did not produce certain matters of fact or of law within the time-limits laid down before that department would not be entitled, under Article 74(2) of Regulation No 40/94, to rely on those matters before the Board of Appeal. On the contrary, the continuity in terms of functions means that such a party is entitled to rely on those matters before the Board of Appeal, subject to compliance with Article 74(2) of that regulation before the Board.

(see para. 29)