

## Case T-185/02

**Claude Ruiz-Picasso and Others**

**v**

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

(Community trade mark — Regulation (EC) No 40/94 — Opposition — Likelihood of confusion — Application for Community word mark PICARO — Earlier word mark PICASSO)

Judgment of the Court of First Instance (Second Chamber), 22 June 2004 . . . II - 1743

### Summary of the Judgment

- 1. Procedure — Application initiating proceedings — Legal person — Legal existence — Proof to be provided by the applicant entity — Possibility, in the absence of proof, of regarding the natural persons constituting the entity as applicants  
(Rules of Procedure of the Court of First Instance, Art. 44(5))*

2. *Community trade mark — Provisions governing procedure — Examination of the facts by OHIM of its own motion — Opposition proceedings — Examination restricted to the submissions of the parties — Well-known facts taken into account*  
(Council Regulation No 40/94, Art. 74(1))
3. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the holder of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Similarity between the marks concerned — Analysis in relation to the perception of the relevant public*  
(Council Regulation No 40/94, Art. 8(1)(b))
4. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the holder of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Degree of attention of the relevant public — Time to be taken into consideration — Time of making the choice of the goods or services concerned*  
(Council Regulation No 40/94, Art. 8(1)(b))
5. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the holder of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Word marks PICARO and PICASSO*  
(Council Regulation No 40/94, Art. 8(1)(b))

1. To comply with the requirements of Article 44(5) of the Rules of Procedure of the Court of First Instance, concerning applications initiating proceedings by a legal person, an entity such as an estate in co-ownership under the French Civil Code which brings an application in its own name must provide proof of its legal existence such as to demonstrate its autonomy and liability, even limited, and must show that the authority granted to its lawyer was properly conferred by a representative of the entity. The fact that the entity was previously registered as the holder of a Community trade mark and on that basis took part in proceedings before the Office for Harmonisation in the Internal

Market (Trade Marks and Designs) is not enough for it to be considered that the action brought in its name complies with the requirements of Article 44.

However, that does not automatically mean that the action in question is inadmissible. Where the name of the estate designates collectively the co-owners, and they, as natural persons,

are not subject to the requirements in Article 44(5) of the Rules of Procedure, it is possible to consider that the action is brought by the co-owners. The fact that they have chosen to bring the action under the collective name of the estate does not affect its admissibility, where the identity of the persons acting under that collective description is not in doubt and, furthermore, no legitimate interest of the other parties to the dispute prevents the Court of First Instance from rectifying, of its own motion, the name of the applicant.

and evidence on which those decisions may be validly based, and, second, to the legal basis of those decisions, that is, the provisions which the jurisdiction hearing the case is obliged to apply. Thus the Board of Appeal, when hearing an appeal against a decision terminating opposition proceedings, may base its decision only on the relative grounds for refusal which the party concerned has relied on and the related facts and evidence it has presented.

(see paras 19-22)

However, Article 74 does not preclude the Board of Appeal from taking into consideration, in addition to the facts expressly put forward by the parties to the opposition proceedings, facts which are well known, that is, which are likely to be known by anyone or which may be learnt from generally accessible sources.

2. According to Article 74 of Regulation No 40/94 on the Community trade mark, 'in proceedings relating to relative grounds for refusal of registration, the Office [for Harmonisation in the Internal Market (Trade Marks and Designs)] shall be restricted in [its] examination to the facts, evidence and arguments provided by the parties and the relief sought'.

(see paras 27-29)

That provision restricts the examination carried out by the Office in two ways. It relates, first, to the factual basis of decisions of the Office, that is, the facts

3. When Article 8(1)(b) of Regulation No 40/94 on the Community trade mark is applied, relating to the ground of refusal based on the likelihood of confusion between two marks, the analysis of the

similarity between the signs in question constitutes an essential element of the global assessment of the likelihood of confusion. It must therefore, like that assessment, be done in relation to the perception of the relevant public.

(see para. 53)

4. A refusal to register a Community trade mark, on the basis of Article 8(1)(b) of Regulation No 40/94, because of the likelihood of confusion with an earlier mark is justified on the ground that such confusion is liable to have an undue influence on the consumers concerned when they make a choice with respect to the goods or services in question. It follows that account must be taken, for the purposes of assessing the likelihood of confusion, of the level of attention of the average consumer at the time when he prepares and makes his choice between different goods or services within the category for which the mark is registered. The possibility that members of the relevant public may also perceive the goods concerned in situations in which they do not pay such attention does not prevent that degree of attention from being taken into account.

(see para. 59)

5. No likelihood of confusion exists, for final consumers in the Community, between the word sign PICARO sought to be registered as a Community trade mark in respect of 'Vehicles and parts therefor; omnibuses' within Class 12 of the Nice Agreement and the word sign PICASSO previously registered as a Community trade mark for 'Vehicles; apparatus for locomotion by land, air or water, motor cars, motor coaches, trucks, vans, caravans, trailers' within the same class. Although the goods referred to by the opposing marks are partly identical and partly similar, and the two signs are visually and phonetically similar, since the degree of similarity in the latter respect is low, the conceptual differences separating the signs are such as to counteract the visual and phonetic similarities, so that the degree of similarity between the marks is not sufficiently great for it to be considered that the relevant public might believe that the goods in question come from the same undertaking or, as the case may be, from economically linked undertakings.

(see paras 51, 52, 54, 58, 62)