Order of the Court (Fourth Chamber) of 27 April 2006 — L'Oréal v OHIM

(Case C-235/05 P)

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Similarity between two trade marks — Likelihood of confusion — Application for Community trade mark FLEXI AIR — Earlier word mark FLEX — Refusal to register)

Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services (Council Regulation No 40/94, Art. 8(1)(b)) (see paras 38-47)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 16 March 2005 in Case T-112/03 *L'Oréal* v *OHIM* dismissing as unfounded an application brought by the applicant for the Community word mark FLEXI AIR for goods in Class 3 for the annulment of decision R 0396/2001-4 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 15 January 2003 dismissing the appeal against the decision of the Opposition Division refusing registration of that mark in opposition proceedings brought by the proprietor of the national word marks FLEX for goods in Classes 3 and 34.

Operative part

The Court:

1. Dismisses the appeal;

2. Orders Oréal SA to pay the costs.