Judgment of the Court of First Instance (Third Chamber) of 14 December 2006 — Gagliardi v OHIM — Norma Lebensmittelfilialbetrieb (MANŪ MANU MANU)

(Case T-392/04)

Community trade mark — Opposition proceedings — Application for the Community figurative trade mark MANŪ MANU MANU — Earlier national word mark MANOU — Refusal to register — Scope and correction of the decision of the Board of Appeal — Restriction of the application for registration — Partial withdrawal of the opposition — Legal interest in bringing opposition proceedings — Proof of use of the earlier mark — Scope of the proof of use — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94

1. *Community trade mark — Appeals procedure (Council Regulation No 40/94, Arts 43(5), 62(1) and 74(1)) (see paras 43-51)*

2. *Community trade mark — Observations of third parties and opposition — Examination of the opposition — Proof of use of the earlier mark (Council Regulation No 40/94, Art. 43(2) and (3)) (see paras 81-94)*

3. *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 110-127)*

Re:

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 15 June 2004 (Case R 154/2002-4), relating to opposition proceedings between Norma Lebensmittelfilialbetrieb GmbH & Co. KG and Salvatore Gagliardi.

Information relating to the case

Applicant for the Community trade mark:	Salvatore Gagliardi
Community trade mark sought:	Figurative mark MANŪ MANU MANU for goods in Classes 18, 24 and 25 — Application No 1021690
Proprietor of the mark or sign cited in the opposition proceedings:	Norma Lebensmittelfilialbetrieb GmbH & Co. KG
Mark or sign cited in opposition:	German Word mark MANOU for goods in Class 25
Decision by the Opposition Division:	Opposition dismissed
Decision of the Board of Appeal:	Appeal upheld; application for registration dismissed

Operative part

The Court:

1. Annuls the decision of the Fourth Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) of 15 June 2004 (Case R 154/2002-4) in so far as it refuses the application for registration of the mark MANŪ MANU MANU, first, for 'footwear' and 'headgear' in Class 25 and second, for goods in Classes 18 and 24;

2. Dismisses the remainder of the action;

3. Orders OHIM to bear its own costs and a third of those incurred by the applicant;

4. Orders the applicant, Salvatore Gagliardi, to bear two thirds of its own costs;

5. Orders the intervener, Norma Lebensmittelfilialbetrieb GmbH & Co. KG, to bear its own costs.