Judgment of the Court of First Instance (Third Chamber) of 15 December 2006 — Ferrero Deutschland v OHIM — Cornu (FERRO)

(Case T-310/04)

Community trade mark — Opposition proceedings — Application for the Community word mark FERRO — Earlier national word mark FERRERO — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 — Similarity of goods

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 61-112)

Re:

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 17 March 2004 (Case R 540/2002-4), relating to opposition proceedings between Ferrero OHG mbH and Cornu SA Fontain.

Information relating to the case

Applicant for the Community trade mark:	Cornu SA Fontain
Community trade mark sought:	Word mark FERRO for goods in Class 30
Proprietor of the mark or sign cited in the opposition proceedings:	Ferrero OHG mbH
Mark or sign cited in opposition:	National word mark FERRERO for goods in Classes 5, 29, 30, 32 and 33
Decision of the Opposition Division:	Opposition dismissed
Decision of the Board of Appeal:	Appeal dismissed

Operative part

The Court:

1. Dismisses the action;

2. Orders the applicant to pay its own costs, the whole of the costs relating to the procedural issue concerning its substitution for Ferrero OHG mbH, and half of the costs incurred by the intervener;

3. Orders the Office for Harmonization in the Internal Market (Trade Marks and Designs) to pay its own costs and half of those incurred by the intervener.