Order of the Court (Sixth Chamber) of 28 September 2006 — El Corte Inglés v OHIM and Pucci

(Case C-104/05 P)

Appeal — Community trade mark — Article 8(1)(b) of Regulation (EC) No 40/94 — Likelihood of confusion — Figurative mark 'EMILIO PUCCI' — Opposition by the proprietor of the national figurative marks 'EMIDIO TUCCI' — Similarity between the goods

1. *Appeal — Grounds — Plea submitted for the first time in the context of the appeal — Inadmissible (Statute of the Court of Justice, Art. 58) (see para. 40)*

2. *Appeal — Grounds — Incorrect assessment of the facts — Inadmissible — Review by the Court of Justice of the assessment of the facts by the Court of First Instance — Possible only when the clear sense of the evidence has been distorted (Art. 225 EC; Statute of the Court of Justice, Art. 58) (see para. 45)*

Re:

APPEAL brought against the judgment of the Court of First Instance (Second Chamber) of 13 December 2004 in Case T-8/03 *El Corte Inglés* v *OHIM — Pucci*, dismissing an action for the annulment of the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 3 October 2002, dismissing the appeal brought by the applicant against the decision of the Opposition Division partially rejecting the opposition brought against the application for registration of the figurative Community trade mark 'EMILIO PUCCI' for goods in Classes 3, 18, 24 and 25.

Operative part

The Court:

1. Dismisses the appeal;

2. Orders El Corte Inglés, SA to pay 80% of the costs;

3. Orders OHIM to pay 20% of the costs.