Judgment of the Court of First Instance (Fourth Chamber) of 26 January 2006 — Volkswagen v OHIM

(Case T-317/03)

Community trade mark — Opposition proceedings — Application for Community word mark Variant — Earlier national word mark DERBIVARIANT — Refusal of registration by the Board of Appeal — Likelihood of confusion — Articles 74(1) and 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 17, 18)*

2. *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 59-60)*

Re:

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 17 June 2003 (Case R 610/2001-4) relating to opposition proceedings between Nacional Motor, SA and Volkswagen AG.

Information relating to the case

Applicant for the Community trade mark:	Volkswagen AG
Community trade mark sought:	Word mark 'VARIANT', Application to register No 861112, for goods in Classes 7, 12 and 37 (including motors, including their parts, vehicles and repairs)
Proprietor of the mark or sign cited in the opposition proceedings:	Nacional Motor SA
Mark or sign cited in the opposition proceedings:	Spanish word marks 'DERBIVARIANT' 'DERBI VARIANT' and 'VARIANTDERBI' for goods in Class 12 (including vehicles)
Decision of the Opposition Division:	Rejection of the opposition
Decision of the Board of Appeal:	Annulment of the decision of the Opposition Division and dismissal of the application for registration

Operative part

The Court:

1. Sets aside paragraph 2 of the operative part of the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 17 June 2003 in so far as it dismisses the application for registration as a Community trade mark of the word sign Variant for goods and services other than those in Classes 7, 12 and 37;

2. Dismisses the remainder of the action;

3. Orders the applicant to pay the costs.