JUDGMENT OF THE COURT (First Chamber)

22 March 2012

(Community trade mark – Definition and acquisition – Earlier trade mark – Procedure for filing – Filing by electronic means – Method enabling precise identification of the day, hour and minute when the application was filed)

In Case C-190/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Spain), made by decision of 24 February 2010, received at the Court on 16 April 2010, in the proceedings

Génesis Seguros Generales Sociedad Anónima de Seguros y Reaseguros (Génesis)

v

Boys Toys SA,

Administración del Estado,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet, E. Levits (Rapporteur), J.-J. Kasel and M. Berger, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Génesis Seguros Generales Sociedad Anónima de Seguros y Reaseguros (Génesis), by M. D. Garayalde Niño and A. I. Alpera Plazas, abogadas, and by V. Venturini Medina, procurador,

– the Spanish Government, by B. Plaza Cruz, acting as Agent,

– the Greek Government, by K. Georgiadis and by Z. Chatzipavlou and G. Alexaki, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Fiorentino, avvocato dello Stato,

– the European Commission, by E. Gippini Fournier, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 31 March 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 27 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

2 The reference has been made in proceedings between Génesis Seguros Generales Sociedad Anónima de Seguros y Reaseguros ('Génesis') and, first, Boys Toys SA ('Boys Toys'), the legal successor to Pool Angel Tomás SL, and, second, the Administración del Estado concerning the Oficina Española de Patentes y Marcas (Spanish Patents and Trade Marks Office) ('the OEPM')'s rejection of the opposition filed by Génesis against the registration of the national Spanish trade mark Rizo's.

Legal context

European Union law

3 First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) has been repealed by Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (codified version) (OJ 2008 L 299, p. 25). Nevertheless, having regard to the date of the facts, First Council Directive 89/104 is still relevant to the dispute in the main proceedings.

4 Article 4 of that directive, entitled 'Further grounds for refusal or invalidity concerning conflicts with earlier rights', states:

'1. A trade mark shall not be registered or, if registered, shall be liable to be declared invalid:

(a) if it is identical with an earlier trade mark, and the goods or services for which the trade mark is applied for or is registered are identical with the goods or services for which the earlier trade mark is protected;

(b) if because of its identity with, or similarity to, the earlier trade mark and the identity or similarity of the goods or services covered by the trade marks, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

2. "Earlier trade marks" within the meaning of paragraph 1 means:

(a) trade marks of the following kinds with a date of application for registration which is earlier than the date of application for registration of the trade mark, taking account, where appropriate, of the priorities claimed in respect of those trade marks;

(i) Community trade marks;

…

…

(c) applications for the trade marks referred to in (a) and (b), subject to their registration;

…

… '

5 Regulation No 40/94 has been repealed by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) (OJ 2009 L 78, p. 1), which came into force on 13 April 2009. However, having regard to the date of the facts, the present dispute is governed by the former regulation, as amended by Council Regulation (EC) No 1992/2003 of 27 October 2003 (OJ 2003 L 296, p. 1) ('Regulation No 40/94 as amended').

6 Article 8(1) and (2) of Regulation No 40/94 as amended, entitled 'Relative grounds for refusal', provided:

'1. Upon opposition by the proprietor of an earlier trade mark, the trade mark applied for shall not be registered:

(a) if it is identical with the earlier trade mark and the goods or services for which registration is applied for are identical with the goods or services for which the earlier trade mark is protected;

(b) if because of its identity with or similarity to the earlier trade mark and the identity or similarity of the goods or services covered by the trade marks there exists a likelihood of confusion on the part of the public in the territory in which the earlier

trade mark is protected; the likelihood of confusion includes the likelihood of association with the earlier trade mark.

2. For the purposes of paragraph 1, "Earlier trade marks" means:

(a) trade marks of the following kinds with a date of application for registration which is earlier than the date of application for registration of the Community trade mark, taking account, where appropriate, of the priorities claimed in respect of those trade marks:

(i) Community trade marks;

…

(b) applications for the trade marks referred to in subparagraph (a), subject to their registration;

…'

7 Article 14(1) of Regulation No 40/94 as amended, under the heading 'Complementary application of national law relating to infringement', provided that the effects of Community trade marks are to be governed solely by the provisions of that regulation and that, in other respects, infringement of a Community trade mark is to be governed by the national law relating to infringement of a national trade mark in accordance with the provisions of Title X of that regulation.

8 Article 26 of Regulation No 40/94 as amended, laying down the conditions with which applications for a Community trade mark must comply, stated:

'1. An application for a Community trade mark shall contain:

(a) a request for the registration of a Community trade mark;

(b) information identifying the applicant;

(c) a list of the goods or services in respect of which the registration is requested;

(d) a representation of the trade mark.

2. The application for a Community trade mark shall be subject to the payment of the application fee and, when appropriate, of one or more class fees.

3. An application for a Community trade mark must comply with the conditions laid down in the implementing Regulation referred to in Article 157.'

9 Article 27 of Regulation No 40/94 as amended, entitled 'Date of filing', stated:

'The date of filing of a Community trade mark application shall be the date on which documents containing the information specified in Article 26(1) are filed with the Office [for Harmonisation in the Internal Market (trade marks and designs) (OHIM)] by the applicant or, if the application has been filed with the central office of a Member State or with the Benelux Trade Mark Office, with that office, subject to payment of the application fee within a period of one month of filing the abovementioned documents.'

10 Article 32 of Regulation No 40/94 as amended, entitled 'Equivalence of Community filing with national filing', provided that a 'Community trade mark application which has been accorded a date of filing shall, in the Member States, be equivalent to a regular national filing, where appropriate with the priority claimed for the Community trade mark application.'

11 Article 97 of Regulation No 40/94 as amended, entitled 'Applicable law', provided:

'1. The Community trade mark courts shall apply the provisions of this Regulation.

2. On all matters not covered by this Regulation a Community trade mark court shall apply its national law, including its private international law.

3. Unless otherwise provided in this Regulation, a Community trade mark court shall apply the rules of procedure governing the same type of action relating to a national trade mark in the Member State where it has its seat.'

12 Rule 5 of Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1), entitled 'Filing of the application', provided:

'(1) [OHIM] shall mark the documents making up the application with the date of its receipt and the file number of the application. The Office shall issue to the applicant without delay a receipt which shall include at least the file number, a representation, description or other identification of the mark, the nature and the number of the documents and the date of their receipt.

(2) If the application is filed with the central industrial property office of a Member Sate or at the Benelux Trade Mark Office in accordance with Article 25 of the Regulation, the office of filing shall number all the pages of the application with arabic numerals. Before forwarding, the office of filing shall mark the documents making up the application with the date of receipt and the number of pages. The office of filing shall issue to the applicant without delay a receipt which shall include at least the nature and the number of the documents and the date of their receipt.

(3) If [OHIM] receives an application forwarded by the central industrial property office of a Member State or the Benelux Trade Mark Office, it shall mark the application with the date of receipt and the file number and shall issue to the applicant without delay a receipt in accordance with the second sentence of paragraph 1, indicating the date of receipt at [OHIM].'

National law

13 Article 6(2)(a) and (c) of Law No 17/2001 of 7 December 2001 on trade marks (Ley 17/2001 de Marcas, BOE No 294 of 8 December 2001, p. 45579) defines earlier trade marks as follows:

'(a) registered trade marks of the following kinds with a date of filing or date of priority of the application for registration which is earlier than the date of the application under consideration:

(i) Spanish trade marks;

(ii) trade marks registered under international arrangements which have effect in Spain;

(iii) Community trade marks.

…

(c) applications for the trade marks referred to in subparagraph (a) and (b), subject to confirmation of their registration.

… '

14 Article 11(6) of Law No 17/2001, under the heading 'Filing of applications', provides:

'The body competent to receive the application shall, upon receipt of the application, record the number of the application and the date, hour and minute of its receipt, in the manner to be determined by regulation.'

15 Article 13 of Law No 17/2001 provides:

'(1) The date of filing of an application shall be the date on which the competent body, as defined in Article 11, receives the documents containing the information specified in Article 12(1).

(2) The date of filing of applications filed at a post office shall be the time at which that office receives the documents containing the information specified in Article 12(1),

provided that those documents are filed in an unsealed envelope, by registered post and with acknowledgment of receipt, addressed to the body competent to receive the application. The post office shall record the day, hour and minute of the filing of the application.

(3) If any of the bodies or administrative units referred to in the preceding paragraphs fails to record, at the time the application is received, the hour of its filing, the application shall be assigned the final hour of the day. If the minute has not been recorded, the application shall be assigned the final minute of the hour. If neither the hour nor the minute of filing has been recorded, the application shall be assigned the final hour and minute of the day in question.'

The dispute in the main proceedings and the question referred for a preliminary ruling

16 It is stated in the order for reference that, on the morning of 12 December 2003, at 11:52 hours and 12:13 hours respectively, Génesis filed with OHIM, by electronic means, two applications for Community trade marks, namely the word mark Rizo for goods in Classes 16, 28, 35 and 36 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and the word mark Rizo, El Erizo for goods in Classes 16, 35 and 36 of that agreement.

17 It is also stated in the order for reference that, on the same day but at 17:45 hours, Pool Angel Tomás SL applied to the OEPM for registration of the word mark Rizo's for goods in Class 28 of that agreement.

18 Génesis opposed the application for registration of the national trade mark, as it took the view that the Community word marks Rizo and Rizo, El Erizo had priority over that trade mark.

19 After the OEPM rejected the opposition by decision of 9 December 2004, Génesis brought an appeal seeking a declaration by the OEPM that the Community trade marks of which Génesis is the proprietor have priority, based on the fact that the application for those trade marks had been filed, by electronic means, on 12 December 2003 and that it is that date which should have been taken into consideration.

20 By decision of 29 June 2005, the OEPM dismissed that appeal. It held once again that, under Article 27 of Regulation No 40/94 as amended, it had to be held that the filing of the application for the Community trade marks at issue in the main proceedings had been carried out on 7 January 2004, the date on which the documentation was actually submitted, and that that date was later than the date of filing of the application for registration of the Spanish trade mark Rizo's.

21 After Génesis brought an appeal against that decision, the Second Section of the Chamber for Contentious Administrative Proceedings of the Tribunal Superior de Justicia de Madrid (High Court of Justice, Madrid) confirmed, by judgment of 7 February 2008, that the decision granting registration of the Spanish trade mark applied for (Rizo's) was well-founded. That court considered that the date of filing of the application for the opposing Community trade marks was the date on which the documentation was actually submitted and not 12 December 2003, the date on which the application was filed by electronic means.

22 Génesis then brought an appeal against that judgment before the referring court. In its appeal, first, Génesis challenges the interpretation of the Tribunal Superior de Justicia de Madrid as regards the date of filing of the Community trade mark applications and states that the correct interpretation of Articles 26 and 27 of Regulation No 40/94 as amended is the one which results in the date of filing of the applications being regarded as the date on which those applications were transmitted to and received by OHIM. Accordingly, in the case in the main proceedings, 12 December 2003 should be accepted as the date of filing. Secondly, Génesis considers that, by failing to recognise the priority of the Community trade marks Rizo and Rizo, El Erizo, the Tribunal Superior de Justicia de Madrid infringed Article 6(2)(a) and (c) of Law No 17/2001.

23 In those circumstances the Tribunal Supremo decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'May Article 27 of [Regulation No 40/94 as amended] be interpreted in such a way as to enable account to be taken not only of the day but also of the hour and minute of filing of an application for registration of a Community trade mark with OHIM (provided that such information has been recorded) for the purposes of establishing temporal priority over a national trade mark application filed on the same day, where the national legislation governing the registration of national trade marks considers the time of filing to be relevant?'

Consideration of the question referred

Admissibility of the reference for a preliminary ruling

24 It should be noted that the question referred by the national court is based on the premise that the Community trade mark applications and the national trade mark application were filed on the same day.

25 Although it is stated in the reference for a preliminary ruling that the OEPM and the court which ruled on the appeal held that the date of filing of the Community trade mark applications was later than the date of filing of the national trade mark application, that fact does not affect the admissibility of the reference for a preliminary ruling.

26 Indeed, according to settled case-law, there is a presumption of relevance in favour of questions on the interpretation of European Union law referred by a national court, and it is a matter for the national court to define, and not for the Court to verify, in which factual and legislative context they operate (Case C-300/01 *Salzmann* [2003] ECR I-4899, paragraphs 29 and 31; Joined Cases C-222/05 to C-225/05 *van der Weerd and Others* [2007] ECR I-4233, paragraph 22; and Case C-210/06 *Cartesio* [2008] ECR I-9641, paragraph 67). The Court declines to rule on a reference for a preliminary ruling from a national court only where it is quite obvious that the interpretation of European Union law that is sought is unrelated to the actual facts of the main action or to its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (*Cartesio*, paragraph 67 and the case-law cited).

27 As Génesis has challenged, both before the court of first instance and the referring court, the argument that the date of filing of the application for the Community trade marks is later than the date of filing of the application for registration of the national trade mark, that issue is part of the subject-matter of the dispute before the referring court. Accordingly, it is not apparent, or at least it is not quite obvious, that the interpretation of European Union law that is sought is unrelated to the actual facts of the main action or to its purpose or that it concerns a hypothetical problem.

28 It is therefore necessary to answer the question referred.

Substance

29 By its question, the referring court asks, in essence, whether Article 27 of Regulation No 40/94 as amended is to be interpreted as enabling account to be taken not only of the day but also of the hour and minute of filing of an application for a Community trade mark with OHIM for the purposes of establishing the priority of that trade mark over a national trade mark filed on the same day, where, according to the national legislation governing the registration of national trade marks, the hour and minute of filing are relevant in that regard.

30 As a preliminary point, it should be borne in mind that the protection of trade marks is characterised, within the European Union, by the coexistence of several systems of protection.

31 First, according to the first recital in the preamble thereto, the purpose of Directive 89/104 is to approximate national trade mark laws in order to remove any existing disparities which may impede the free movement of goods and the freedom to provide services and which may distort competition within the common market.

32 Although the third recital in the preamble to Directive 89/104 states that ‘it does not appear to be necessary at present to undertake full-scale approximation of the trade mark laws of the Member States’, the directive none the less provides for harmonisation

in relation to substantive rules of central importance in this sphere, that is to say, according to the same recital, the rules concerning the provisions of national law which most directly affect the functioning of the internal market, and that recital does not preclude the harmonisation relating to those rules from being complete (Case C-355/96 *Silhouette International Schmied* [1998] ECR I-4799, paragraph 23; Case C-40/01 *Ansul* [2003] ECR I-2439, paragraph 27; and Case C-482/09 *Budějovický Budvar* [2011] ECR I-0000, paragraph 30).

33 However, the fifth recital in the preamble to Directive 89/104 states, inter alia, that the 'Member States … remain free to fix the provisions of procedure concerning the registration, the revocation and the invalidity of trade marks acquired by registration; … they can, for example, determine the form of trade mark registration and invalidity procedures, decide whether earlier rights should be invoked either in the registration procedure or in the invalidity procedure or in both and, if they allow earlier rights to be invoked in the registration procedure, have an opposition procedure or an ex officio examination procedure or both'.

34 It must therefore be held that Directive 89/104 does not contain any provisions relating to the procedure for filing or to establishing the date of filing of applications for national trade marks. Since the Member States remain free to determine their own provisions on the subject, those provisions may, consequently, differ from one Member State to another.

35 Second, it follows from the second recital in the preamble to Regulation No 40/94 as amended that the objective of that regulation is the creation of a Community regime for trade marks to which uniform protection is given and which produce their effects throughout the entire area of the European Union (see, to that effect, Case C-235/09 *DHL Express France* [2011] ECR I-0000, paragraph 41).

36 That Community trade mark system is an autonomous system with its own set of objectives and rules peculiar to it; it applies independently of any national system (see, inter alia, Case C-238/06 P *Develey* v *OHIM* [2007] ECR I-9375, paragraph 65; Joined Cases C-202/08 P and C-208/08 P *American Clothing Associates* v *OHIM* and *OHIM* v *American Clothing Associates* [2009] ECR I-6933, paragraph 58; and Case C-479/09 P *Evets* v *OHIM* [2010], ECR I-0000, paragraph 49).

37 As an autonomous system which is independent from national systems, the Community trade mark regime has its own rules relating to the procedure for filing an application for a Community trade mark, contained in Regulations No 40/94 as amended and Regulation No 2868/95. In particular, Article 27 of Regulation No 40/94 as amended contains a specific provision relating to the date of filing of an application for a Community trade mark and does not refer to the provisions of national law in that regard.

38 In those circumstances, in order to answer the question referred, it is necessary, first, to determine whether the concept of 'date of filing of a Community trade mark application' contained in Article 27 of Regulation No 40/94 as amended should be interpreted as requiring account to be taken not only of the day but also of the hour and minute of filing of that application.

39 Second, if the concept of 'date of filing of a Community trade mark application' under Article 27 of Regulation No 40/94 as amended is to be interpreted as not requiring account to be taken of the hour and minute of filing of that application, it must be ascertained whether European Union law precludes those elements from nevertheless being taken into account under national law for the purposes of establishing a Community trade mark's priority over a national trade mark filed on the same day, where the national legislation governing the registration of that national trade mark considers the hour and minute of filing to be relevant.

Meaning and scope of the concept of 'date of filing' laid down in Article 27 of Regulation No 40/94 as amended

40 First of all, it should be observed that the need for a uniform application of European Union law and the principle of equality require that the terms of a provision of European Union law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union; that interpretation must take into account the context of the provision and the objective of the relevant legislation (see, inter alia, Case 327/82 *Ekro* [1984] ECR 107, paragraph 11; Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 43; Case C-467/08 *Padawan* [2010] ECR I-0000, paragraph 32; and *Budějovický Budvar*, paragraph 29).

41 Next, it follows from case-law that the meaning and scope of terms for which European Union law provides no definition must be determined by considering their usual meaning in everyday language, while also taking into account the context in which they occur and the purposes of the rules of which they form part (see, inter alia, Case C-336/03 *easyCar* [2005] ECR I-1947, paragraph 21; Case C-549/07 *Wallentin-Hermann* [2008] ECR I-11061, paragraph 17; Case C-151/09 *UGT-FSP* [2010] ECR I-0000, paragraph 39; and *Budějovický Budvar*, paragraph 39).

42 Lastly, the need for a uniform interpretation of the various language versions of a provision of European Union law also requires, in the case of divergence between those language versions, that the provision in question be interpreted by reference to the purpose and general scheme of the rules of which it forms part (Case C-72/95 *Kraaijeveld and Others* [1996] ECR I-5403, paragraph 28; Case C-63/06 *Profisa* [2007] ECR I-3239, paragraph 14; and Case C-585/10 *Møller* [2011] ECR I-0000, paragraph 26).

43 It is clear from a comparison of the various language versions of Article 27 of Regulation No 40/94 as amended that those versions do display certain differences.

44 Thus, the Czech, German, Hungarian, Slovak, Finnish and Swedish versions of that article refer - in both the heading and the main text thereof - to the day of filing ('Den podání', 'Anmeldetag', 'A bejelentés napja', 'Deň podania', 'Hakemispäivä', 'Ansökningsdag'), while the Lithuanian and Polish versions of that article state that the date of filing ('Padavimo data', 'Data zgłoszenia') corresponds to the day ('diena', 'dzień') when the application was filed.

45 By contrast, the other language versions simply use the expression 'date of filing' of the Community trade mark application.

46 Nevertheless, the differences between those language versions must be placed in perspective since, according to its ordinary meaning, the term 'date' generally designates the day of the month, the month and the year when an act has been adopted or an event has taken place. In the same way, stating the day when an act has been adopted or an event has taken place means, according to its ordinary meaning, that it is also necessary to state the month and the year.

47 However, an obligation to state the date or the day does not imply, according to the ordinary meaning, that it is necessary to state the hour and, *a fortiori*, the minute. Therefore, in the absence of any express reference in Article 27 of Regulation No 40/94 as amended to the hour and minute of filing of a Community trade mark application, it is apparent that that information was not considered by the Community legislature to be necessary for the purposes of establishing the time of filing of a Community trade mark application and hence its priority over another trade mark application.

48 That interpretation also follows from the context of Article 27 of Regulation No 40/94 as amended. In particular, Rule 5 of Regulation No 2868/95, which details the formalities to be completed by OHIM, by the central industrial property office of a Member State or by the Benelux Trade Mark Office upon the filing of an application for a Community trade mark, only establishes an obligation to indicate on the application the date of receipt of that application and not the hour and minute thereof.

49 It must be held that, if the Community legislature had considered that the hour and minute of filing of a Community trade mark application ought to be taken into account as constituent elements of the 'date of filing' of that application within the meaning of Article 27 of Regulation No 40/94 as amended, that information should have been included in Regulation No 2868/95.

50 In that regard, the fact that, according to the information on OHIM's website, the date of filing of a Community trade mark application is that on which the documents referred to in Article 26 of Regulation No 40/94 as amended are filed with OHIM, Central European Time (GMT +1), none the less does not permit the conclusion that the

hour and minute of filing of that application are relevant for the purposes of establishing that trade mark's priority. As the Advocate General observes in point 61 of his Opinion, that indication of time only allows the date of filing before OHIM to be established.

51 The fact – noted by Génesis in the main proceedings – that, when applications for Community trade marks are submitted by electronic means, OHIM *de facto* certifies the date and the time of filing of those applications, is also irrelevant.

52 It is true that, under Article 10(2) of Decision No EX-11-3 of the President of the Office of 18 April 2011 concerning electronic communication with and by the Office ('Basic Decision on Electronic Communication'), an electronic communication confirming receipt of the – also electronic – Community trade mark application, indicating the date and hour of receipt of that application, is to be issued to the sender. However, it also follows from Article 10(2) that the communication confirming receipt of that application is to include a statement that the date of receipt will be considered to be the filing date provided that a fee is paid in time, and there is no reference in that regard, to the hour of receipt of the application.

53 In any event, given that an application for a Community trade mark may be filed, according to Article 25(1) of Regulation No 40/94 as amended, with OHIM, with the central industrial property office of a Member State or with the Benelux Trade Mark Office (according to preference), if it was necessary to take the hour and minute of filing of an application for a Community trade mark into account, that obligation would have to stem explicitly from provisions of general application and not from the decision of the President of OHIM relating to the filing of applications for Community trade marks by electronic means.

54 It follows from all of the foregoing that the concept of 'date of filing of a Community trade mark application' contained in Article 27 of Regulation No 40/94 as amended requires the calendar day of filing of an application for a Community trade mark to be taken into account, but does not require the hour and minute of filing to be taken into account.

Taking the hour and minute of filing into account pursuant to national law

55 That having been stated, it must still be ascertained whether European Union law precludes the hour and minute of filing of an application for a Community trade mark from nevertheless being taken into account under national law for the purposes of establishing a Community trade mark's priority over a national trade mark filed on the same day, where the national legislation governing the registration of national trade marks considers the hour and minute of filing to be relevant.

56 In that regard, it is sufficient to note – as has been observed in paragraph 37 of this judgment – that, as an autonomous system, the Community trade mark regime has

its own rules relating to the date of filing of an application for a Community trade mark and does not refer to provisions of national law.

57 Accordingly, the date of filing of an application for a Community trade mark may only be established according to the rules of European Union law, the approaches adopted by the law of the Member States not having any effect in that regard.

58 Indeed, first, as the Advocate General observes in point 63 of his Opinion, it follows from Article 14 read in conjunction with Article 97 of Regulation No 40/94 as amended that the applicability of national law is limited to questions which fall outside the scope of Regulation No 40/94 as amended.

59 Second, in a situation such as that at issue in the main proceedings, where a Community trade mark is invoked for the purposes of opposing the registration of a national trade mark, if the date of filing of the application for that Community trade mark were to be established by taking account of provisions of national law, that would in effect undermine the uniform nature of the protection of a Community trade mark. Since, as noted in paragraph 34 of this judgment, the Member States remain free to determine the procedure for filing applications for national trade marks, the extent of the protection given to that Community trade mark might differ from one Member State to another.

60 The conclusion that the date of filing of an application for a Community trade mark can only be established according to the rules of European Union law is not called into question by Article 32 of Regulation No 40/94 as amended according to which a Community trade mark application which has been accorded a date of filing is, in the Member States, to be equivalent to a regular national filing, where appropriate with the priority claimed for the Community trade mark application.

61 As the Advocate General observes in point 65 of his Opinion, that provision neither amends the Community concept of the 'date of filing' nor presupposes the secondary application of national law, but simply recognises that Community trade mark applications filed with OHIM are legally equivalent to those filed with national offices.

62 It follows that European Union law precludes the hour and minute of the filing of an application for a Community trade mark from being taken into account under national law for the purposes of establishing that Community trade mark's priority over a national trade mark filed on the same day, where the national legislation governing the registration of national trade marks considers the hour and minute of filing to be relevant in that regard.

63 In light of all of the foregoing, the answer to the question referred is that Article 27 of Regulation No 40/94 as amended must be interpreted as precluding account being taken not only of the day but also of the hour and minute of filing of an

application for a Community trade mark with OHIM for the purposes of establishing that trade mark's priority over a national trade mark filed on the same day, where, according to the national legislation governing the registration of national trade marks, the hour and minute of filing are relevant in that regard.

Costs

64 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 27 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, as amended by Council Regulation (EC) No 1992/2003 of 27 October 2003 must be interpreted as precluding account being taken not only of the day but also of the hour and minute of filing of an application for a Community trade mark with the Office for Harmonisation in the Internal Market (trade marks and designs) (OHIM) for the purposes of establishing that trade mark's priority over a national trade mark filed on the same day, where, according to the national legislation governing the registration of national trade marks, the hour and minute of filing are relevant in that regard.

[Signatures]

** Language of the case: Spanish.