

Action brought on 17 May 2002 by Naipes Heraclio Fournier, S.A. against Office for the Harmonization of the Internal Market (trade marks and designs) (OHIM)

(Case T-162/02)

(2002/C 180/53)

(Language of the case: Spanish)

An action against Office for Harmonization in the Internal Market (trade marks and designs) (OHIM) was brought before the Court of First Instance of the European Communities on 17 May 2002 by Naipes Heraclio Fournier, established in Alava (Spain), represented by Enrique Armijo Chavarri.

The applicant claims that the Court should:

- annul the decision of the Second Board of Appeal of the OHIM of 28 February 2002;
- order the OHIM to pay the costs.

Pleas in law and main arguments

The Community trade mark concerned: Figurative mark depicting a 'rey de espadas' (king of spades) — Registered trade mark No 0000089961 for goods within Class 16 (playing cards)

(See the information for Case T-160/02 Heraclio Fournier v OHIM)

Action brought on 24 May 2002 by Kaul GmbH against Office for the Harmonization of the Internal Market (trade marks and designs) (OHIM)

(Case T-164/02)

(2002/C 180/54)

(Language of the case to be determined pursuant to Article 131(2) of the Rules of Procedure — Language in which the application was drafted: German)

An action against Office for Harmonization in the Internal Market (trade marks and designs) (OHIM) was brought before the Court of First Instance of the European Communities on 24 May 2002 by Kaul GmbH, whose registered office is in Elmshorn (Germany), represented by G. Würtenberger and R. Kunze, lawyers.

The applicant claims that the Court should:

- Annul the decision of the Third Board of Appeal of 4 March 2002 in Case R 782/2000-3 concerning the opposition proceedings brought by the proprietor of the Community trade mark No 49106 CAPOL against the application for registration of the Community trade mark No 000195370 'ARCOL';
- Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: Atlantic Richfield Company (part of Bayer Aktiengesellschaft)

The Community trade mark concerned: Word mark 'ARCOL' for goods in Classes 1, 17 and 20 (including chemical substances for preserving foodstuffs) — Application No 195370

Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings: The applicant

Trade mark or sign asserted by way of opposition in the opposition proceedings: Community trade mark 'CAPOL' for Class 1 (chemical substances for preserving foodstuffs) — Registered under No 49106

Decision of the Opposition Division: Dismissal of the opposition

Decision of the Board of Appeal: Dismissal of the applicant's appeal

- Grounds of claim:
- The applicant was not informed of the change of party submitting the application for registration of a Community trade mark
 - under Regulation No 40/94⁽¹⁾, it is permissible to put forward new facts in the course of proceedings
 - Error of assessment of the likelihood of confusion pursuant to Article 8(1)(b) of Regulation No 40/94.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.