

The Community trade mark in respect of which registration is sought is the word mark 'NIKE F.I.T.' — application No 277731 in respect of goods in Class 25 'clothing, footwear and headgear'.

Action brought on 5 December 2002 by Muswellbrook Limited against the Office for Harmonisation in the Internal Market (OHIM)

(Case T-366/02)

(2003/C 44/68)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market (OHIM) was brought before the Court of First Instance of the European Communities on 5 December 2002 by Muswellbrook Limited, established in Dublin (Ireland), represented by J. Casulá Oliver, lawyer.

The applicant claims that the Court should:

- declare incompatible with Regulation (EC) No 40/94 on the Community trade mark, in particular Article 15(2)(a) and/or Article 42(2) and (3) and/or Article 8(1)(b) thereof, the decision of the First Board of Appeal of the OHIM of 30 September 2002 in case No R 880/1999-1, inasmuch as it declares that the opponent has failed to prove genuine use in the Community of the Spanish trade mark No 88222 to distinguish ready-to-wear and other items of clothing in Class 25 during the five years preceding the publication of the application for a Community trade mark;
- annul that decision in its entirety;
- agree to vary that decision so as to declare that an assessment of and a ruling on the merits of the opposition to registration of Community trade mark No 252411 is appropriate, to which end the Court's judgment should declare that Community trade mark No 252411 is refused, or, in the alternative, refer the case back to the First Board of Appeal of the OHIM;

- order the defendant and, where appropriate, the intervenor to pay all the costs of the proceedings and those incurred at the administrative stages of the opposition and appeal proceedings.

Pleas in law and main arguments

The applicant seeking the Community trade mark, the proprietor of the mark cited in opposition, the tenor of the decisions of the Opposition Division and the Board of Appeal and the pleas in law and main arguments are the same as those in Case T-362/02 (MUSWELLBROOK LIMITED v OHIM).

The Community trade mark in respect of which registration is sought is the mixed mark 'TRIAX NIKE SERIES' with graphic — application No 252411 in respect of goods in Class 25 'clothing, footwear and headgear'.

Action brought on 10 December 2002 by Bernard Barbé against the European Parliament

(Case T-371/02)

(2003/C 44/69)

(Language of the Case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 10 December 2002 by Bernard Barbé, resident at Luxembourg, represented by Alain Loraing, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

- rule that the Parliament wrongly has not passed on to him the deductions from Mrs Boez's salary which fell due up until 11 November 1998;
- order payment to him of the deductions made in respect of the months from March 1998 to November 1998 inclusive;
- order the defendant to pay the costs.