

The applicant claims that the Court should:

- annul the contested decision of the Second Board of Appeal of 9 September 2003 (Case R 174/2002-2);
- order the Office to pay the costs.

Pleas in law and main arguments

Applicant for Community trade mark: Biker Miles Motorrad Handels- und Vertriebsgesellschaft mbH

Community trade mark sought: Coloured word/figurative mark 'BIKER MILES' for goods in Classes 9 (replacement parts and accessories for two-wheeled vehicles etc.), 12 (motorcycles etc.) and 25 (equipment and clothing for the riders of two-wheeled vehicles etc.) — Application No 1 237 734.

Proprietor of mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: The Community trade mark 'MILES' for goods in Class 25.

Decision of the Opposition Division: Refusal to register the mark sought.

Decision of the Board of Appeal: The appeal was granted and the opposition rejected.

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 40/94 ⁽¹⁾.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 24 November 2003 by Deutsche Telekom AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-386/03)

(2004/C 35/21)

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

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the

Court of First Instance of the European Communities on 24 November 2003 by Deutsche Telekom AG, Bonn (Germany), represented by D. Marschollek, lawyer. Client Logic GmbH & Co. KG, Oberhausen (Germany), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- annul the decision of the Fourth Board of Appeal of 7 January 2003, notified on 26 September 2003, (Case R 80/2001-4);
- order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for Community trade mark: The applicant.

Community trade mark sought: Word mark 'DTel' for goods and services in Classes 9 (electric apparatus etc.), 37 (construction etc.), 38 (telecommunications etc.) and 42 (computer programming services etc.) — Application No 1 176 639.

Proprietor of mark or sign cited in the opposition proceedings: Client Logic GmbH & Co. KG.

Mark or sign cited in opposition: The national word mark 'TETEL' for goods and services in Classes 9, 37, 38 and 42.

Decision of the Opposition Division: Rejection of the opposition.

Decision of the Board of Appeal: Partial refusal of the application to register, in respect of goods and services in Class 38. Dismissal of the remainder of the appeal.

Pleas in law: Infringement of Article 8(1)(a) and (b) of Regulation No 40/94 ⁽¹⁾.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).