

Decision of the
Opposition Division:

Opposition rejected

applicant may be confused with those of the opponent.

The predominant feature of the trade marks in issue is their characteristic portrayal, together with a particular graphic presentation.

In conclusion: there is no likelihood of confusion in the mind of the consumer in the event of there coexisting on the market of different signs which merely coincide in the term 'FIX'.

Decision of the
Board of Appeal:

Decision of the Opposition Division annulled and registration refused

Pleas in law:

Misinterpretation of Article 8(e)(2)(a) of Regulation No 40/94 by the Board of Appeal inasmuch as it found that registration of the trade mark sought could result in a likelihood of confusion with Community trade marks No 587725 and No 771196

According to the tenth recital of the preamble to the Community trade mark directive, assessment of the likelihood of confusion depends on numerous factors In the contested decision, the Board of appeal committed a manifest error of assessment in that, after setting out a number of such factors in general terms, it failed subsequently to fulfil its obligation to make a global assessment thereof.

By analysing the signs by comparison with each other, the contested decision failed to carry out a global assessment of the signs in question, a test set down in, among others, Case C-342/97 Lloyd Schuhfabrik Meyer [1999] ECR I-3819, paragraph 25.

Manifest contraction by the Board of Appeal in that, while citing the 'global assessment of the signs in question' test, it subsequently adopted a different test and proceeded to 'dissect' the Community trade mark whose application was sought.

The applicant claims that the decision of the Board of Appeal concludes, surprisingly, that despite all the dissimilarities between the signs in issue, there is a likelihood of confusion between the trade marks in question.

Account should also have been taken of all the Community trade marks registered by third parties in respect of goods in Classes 6, 17 and 19 containing the suffix and/or prefix 'FIX', some of which pre-date those of the opponent's. Given that there is no likelihood of confusion as between them, it cannot be claimed that that of the

Action brought on 9 June 2004 by the Government of Gibraltar against the Commission of the European Communities

(Case T-211/04)

(2004/C 217/49)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 9 June 2004 by the Government of Gibraltar, represented by M. Llamas, lawyer, J. Temple Lang, Solicitor, A. Petersen, lawyer, and K. Nordlander, lawyer.

The applicant claims that the Court should:

- annul the decision in its entirety;
- order the Commission to pay Gibraltar's legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments:

The applicant contests the Commission decision of 30 March 2004 on the aid scheme which the United Kingdom is planning to implement with regard to the Government of Gibraltar Corporation Tax Reform (¹). In the decision, the Commission finds that the proposed tax reform constitutes state aid incompatible with the common market.

The applicant states that the Commission considers the reform regionally selective in that it confers tax advantages to companies in Gibraltar compared to companies in the United Kingdom and that the reform is materially selective in that specific features confer tax advantages to some companies in Gibraltar compared to other companies in Gibraltar.

In support of its application, the applicant submits firstly that the Commission misapplied the law and committed errors in reasoning in finding that Gibraltar's proposed tax reform is regionally selective.

In this regard, the applicant states that the assumption that Gibraltar is part of the United Kingdom, is wrong. According to the applicant, this is clear under domestic constitutional law, public international law and Community law.

The applicant furthermore submits that the Commission's regional selectivity principle cannot apply to Gibraltar. According to the applicant, the decision concerns two tax jurisdictions which are entirely separate and mutually exclusive so that Gibraltar's tax laws cannot be treated as derogations from tax law in the United Kingdom.

Secondly, the applicant submits that the Commission misapplied the law and committed errors in reasoning in finding that tax reform is materially selective. According to the applicant, the reform is of a general nature and represents a reasonable choice of economic policy by Gibraltar.

According to the applicant, the provisions that companies who make no profits are not taxed and that companies are not required to pay more than a specified maximum amount, are merely designed to avoid over-taxation and do not apply selectively to a particular group or category.

The applicant also claims that the Commission is wrong in stating in relation to the payroll tax and property tax not applying to companies without commercial buildings or employees in Gibraltar, that the reform exempts an offshore sector and is materially selective on that ground. The applicant claims furthermore that the Commission breached essential procedural requirements in this regard because neither the United Kingdom nor the applicant were given an opportunity to comment on this issue during the formal investigation.

Finally, the applicant submits that the reform cannot be considered selective because its nature, general scheme and essential features are designed to suit the special characteristics of the economy in Gibraltar and in particular its limited size, scarcity of labour, service dominated industry and operational simplicity for a small administration.

Action brought on 8 June 2004 by the Royal County of Berkshire Polo Club Ltd against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-214/04)

(2004/C 217/50)

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

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 8 June 2004 by the Royal County of Berkshire Polo Club Ltd, Windsor (United Kingdom), represented by J. H. Maitland Walker, Solicitor, and D. McFarland, Barrister.

The Polo/Lauren Company LP was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- annul the decision of the First Board of Appeal of March 25, 2004 in case R 273/2002-1 rejecting the applicant's application
- order the Office to pay the costs

Pleas in law and main arguments:

Applicant for Community trade mark:	the applicant
Community trade mark sought:	Figurative mark 'ROYAL COUNTY OF BERKSHIRE POLO CLUB' for goods in class 3 (cleaning preparations etc.)
Proprietor of mark or sign cited in the opposition proceedings:	Polo Lauren Company LP
Mark or sign cited in opposition:	National figurative and work marks containing the word 'POLO'
Decision of the Opposition Division:	Opposition rejected
Decision of the Board of Appeal:	Decision of the opposition division annulled; registration refused
Pleas in law:	Violation of Article 8(1)(b) of Regulation 40/94 ⁽¹⁾ . The applicant argues that the signs in question are dissimilar.

⁽¹⁾ State aid C 66 /2002 — Gibraltar government corporation tax reform