

Finally, the applicant submits that the Commission infringed the applicant's right of defence and the right to a fair hearing, by breaching its duty to inform the applicant of the essence of the measures imposed by the sanction in sufficient time to afford the applicant an opportunity to comment on them before the contested decision was adopted.

<sup>(1)</sup> Commission Regulation (Euratom) No 302/2005 of 8 February 2005 on the application of Euratom safeguards (OJ L 54, p. 1)

**Action brought on 28 April 2006 — Helkon Media v Commission**

(Case T-122/06)

(2006/C 154/49)

*Language of the case: German*

**Parties**

*Applicant:* Helkon Media AG (Munich, Germany) (represented by: U. Karpenstein, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

- order the European Commission to pay the sum of EUR 120 000 to HELKON MEDIA AG i.L;
- order the Commission to pay the costs.

**Pleas in law and main arguments**

Helkon Media AG, in liquidation, represented by its insolvency administrator, relies on a claim for payment against the European Commission under an agreement to support a film, on the basis of an arbitration clause for the purposes of Article 238 EC, in the annex to that agreement.

According to the applicant, the claim for payment is not extinguished by the set-off alleged by the Commission. It bases its action on the assertion that this set-off has no legal basis. The applicant further contends that a set-off after the opening of insolvency proceedings is inadmissible in German law. Finally, it submits that the recognised conditions for a set-off have not been met.

**Action brought on 28 April 2006 — Kapman v OHIM (representation of a saw blade in blue)**

(Case T-127/06)

(2006/C 154/50)

*Language of the case: English*

**Parties**

*Applicant:* Kapman A.B. (Sandviken, Sweden) (represented by: R. Almaraz Palmero, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

**Form of order sought**

- Annulment of the Decision of the Second Board of Appeal at OHIM of 10 February 2006 in Case R 303/2004-2;
- order the Office to refund the appeal fee to the applicant;
- order the Office to pay the costs of the dispute, including those relating to the procedure before the Board of Appeal.

**Pleas in law and main arguments**

*Community trade mark concerned:* A figurative mark representing a saw blade in blue for goods in class 8 [saw blades (for hand-operated tools)] — application No 2 532 497

*Decision of the examiner:* Refusal of the application

*Decision of the Board of Appeal:* Dismissal of the appeal

*Pleas in law:* Infringement of Article 7(1)(b) of Council Regulation No 40/94 as among others the combination of shape and colour causes an outstanding visual impression to the relevant public, i.e. professional handymen and not to the average consumer.