

*Decision of the Opposition Division:* Opposition dismissed.

*Decision of the Board of Appeal:* Appeal dismissed.

*Pleas in law:* Incorrect application of Article 8(1)(b) and 5 of Regulation (EC) No 40/94 on the Community trade mark. The applicant submits, in that regard, that the Community trade mark which is the subject of these proceedings has as its main component the word 'DOUGHNUTS', which may be confused with the family of opposing marks DONUT-DONUTS-DOGH-NUTS applied to the same goods and services, giving rise to a serious risk of confusion on the part of the Spanish public.

**Action brought on 27 November 2006 — Moreira da Fonseca v OHIM — General Óptica (GENERAL OPTICA)**

(Case T-318/06)

(2006/C 326/145)

*Language in which the application was lodged:* English

**Parties**

*Applicant:* Alberto Jorge Moreira da Fonseca L<sup>da</sup> (Santo Tirso, Portugal) (represented by: M. Oehen Mendes, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* General Óptica SA (Barcelona, Spain)

**Form of order sought**

— Annul the decision of the First Board of Appeal of OHIM of 8 August 2006 notified to the applicant 4 October 2006, in cancellation proceedings No 827C (Case No R 947/2005-1) and consequently declare Community trade mark No 573 592 'GENERAL OPTICA' filed on 10 July 1997 and registered on 13 September 1999, as invalid, or in the alternative, revoked;

— order the defendant to pay the costs.

**Pleas in law and main arguments**

*Registered Community trade mark subject of the application for a declaration of invalidity:* The figurative mark 'GENERAL OPTICA' for services in class 42 (Opticians' services) — Community trade mark No 573 592

*Proprietor of the Community trade mark:* General Óptica SA

*Party requesting the declaration of invalidity of the Community trade mark:* The applicant

*Trade mark right of the party requesting the declaration of invalidity:* The earlier national trade name 'Generalóptica' for import and retail sale of optical, precision and photographic apparatus

*Decision of the Cancellation Division:* Rejection of the request for a declaration of invalidity

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

*Pleas in law:* Infringement of among others Article 8(1) and (4) of Council Regulation No 40/94 as there is a likelihood of confusion between the two signs and the applicant's sign is granted national protection.

Infringement of Rule 22 of Commission Regulation No 2868/95 as OHIM omitted its duty to ask the applicant to present evidence of the earlier use invoked.

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

*Other party to the proceedings before the Board of Appeal:* General Óptica SA (Barcelona, Spain)

**Form of order sought**

— Annul the decision of the First Board of Appeal of OHIM of 8 August 2006 notified to the applicant 27 September 2006, in cancellation proceedings No 828C (Case No R 944/2005-1) and consequently declare Community trade mark No 2 436 798 'GENERAL OPTICA' filed on 5 November 2001 and registered on 20 November 2002, as invalid, or in the alternative, revoked;

— order the defendant to pay the costs.