

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

Other party to the proceedings before the OHIM Board of Appeal: Union Investment Privatfonds GmbH.

Form of order sought

— Annul the contested decision.

Pleas in law and main arguments

Applicant for a Community trade mark: Unicredito Italiano SpA

Community trade mark concerned: Figurative mark '1 Unicredit', registration application No 2.055.069 for goods and services in Classes 9, 16, 35, 36, 38, 39, 41 and 42.

Proprietor of the mark or sign cited in the opposition proceedings: Union Investment Privatfonds GmbH

Mark or sign cited in opposition: German word marks 'UNIFONDS' (No 881.995) and 'UNIRAK' (No 991.997) and figurative mark 'UNIZINS' (No 2.016.954) for services in Class 36 (capital investment).

Decision of the Opposition Division: to allow the opposition.

Decision of the Board of Appeal: to dismiss the action.

Pleas in law: Misapplication of the theory of the extended protection of 'serial marks' as formulated by the Court of First Instance in Case T-194/03 *Il Ponte Finanziaria v OHIM* [2006] ECR II-0000 (*Bainbridge*).

Action brought on 27 December 2006 — giropay v OHIM (GIROPAY)

(Case T-399/06)

(2007/C 42/60)

Language of the case: German

Parties

Applicant: Giropay GmbH (Frankfurt am Main, Germany) (represented by: K. Gründig-Schnelle, lawyer)

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

Form of order sought

— annul the decision of 26 October 2006 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal

Market in appeal case R 308/2005-4 in relation to Community trade mark application No 2 843 514 'GIROPAY';

— order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'GIROPAY' for goods and services in Classes 9, 36-38 and 42 (Application No 2 843 514).

Decision of the Examiner: Partial rejection of the application.

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

Pleas in law: The mark applied for does not present any descriptive indications for the purposes of Article 7(1)(c) of Regulation (EC) No 40/94 ⁽¹⁾. In addition, the mark applied for is particularly capable of being perceived by the relevant public as a distinctive sign.

⁽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 28 December 2006 — Brosmann Footwear (HK) and Others v Council

(Case T-401/06)

(2007/C 42/61)

Language of the case: English

Parties

Applicants: Brosmann Footwear (HK) Ltd (Kowloon, Hong Kong), Seasonable Footwear (Zhong Shan) Ltd (Banfu, China), Lung Pao Footwear (Guangzhou) Ltd (Guangzhou, China), Risen Footwear (HK) Co. Ltd (Kowloon, Hong Kong) (represented by: L. Ruessmann, A. Willems, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EC) No 1472/2006 to the extent it imposes anti-dumping duties on exports by the applicants;

— order the Council to pay the costs.