

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

*Mark or sign cited in opposition:* Community word mark 'TORRES 10' for goods in Class 33 (No 466896) and numerous other Community, national and international trade marks

*Decision of the Opposition Division:* Opposition upheld and application for registration of the mark refused

*Decision of the Board of Appeal:* Appeal upheld, annulment of the contested decision and rejection of the opposition

*Pleas in law:* Infringement of Article 8(1) (b) of Regulation (EC) No. 40/94 <sup>(1)</sup> in that there is a likelihood of confusion of the conflicting marks

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

*Proprietor of the Community design:* PepsiCo, Inc.

*Party requesting the declaration of invalidity of the Community design:* The applicant

*Design of the party requesting the declaration of invalidity:* Registered Community design for 'metal plate[s] for games' — Community Design No 53186-1

*Decision of the Invalidity Division:* Declaration of invalidity of the Community design

*Decision of the Board of Appeal:* Annulment of the Invalidity Division's decision and dismissal of the application for a declaration of invalidity of the registered Community design

*Pleas in law:* The contested Community Design No 74463-1 lacks novelty and individual character compared to the registered Community Design No 53186-1, which has claimed priority of an earlier Spanish design.

### Action brought on 9 January 2007 — Grupo Promer Mon-Graphic v OHIM — PepsiCo (Designs)

(Case T-9/07)

(2007/C 56/66)

*Language in which the application was lodged:* English

#### Parties

*Applicant:* Grupo Promer Mon-Graphic, SA (Sabadell, Spain) (represented by: R. Almaraz Palmero, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* PepsiCo, Inc. (New York, USA)

#### Form of order sought

— Annulment of the decision of the Third Board of Appeal at OHIM of 27 October 2006 in Case R 1001/2005-3;

— order the Office for the Harmonisation in the Internal Market (OHIM) and the intervening party, Pepsico Inc., to pay all the costs of the dispute before the Court of First Instance, including those relating to the procedure before the Third Board of Appeal.

#### Pleas in law and main arguments

*Registered Community design subject of the application for a declaration of invalidity:* Registered Community design for 'promotional item[s] for games' — Community Design No 74463-1

### Action brought on 8 January 2007 — FVB v OHIM — FVD (FVB)

(Case T-10/07)

(2007/C 56/67)

*Language in which the application was lodged:* German

#### Parties

*Applicant:* FVB Gesellschaft für Finanz- und Versorgungsberatung mbH (Osnabrück, Germany) (represented by: P. Koehler, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* FVD Gesellschaft für Finanzplanung und Vorsorgemanagement Deutschland mbH

#### Form of order sought

— Alter the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) in appeal case R 1343/2005-4 of 6 November 2006 so as to annul the decision of 12 September 2005 on opposition No B 549 362 of the Finanz- und Versorgungsdienstgesellschaft für Finanzberatung und Vorsorgemanagement mbH against application No 2 126 175 and to reject the opposition;

— Order the defendant to pay the costs of the proceedings.