

Secondly, the applicant submits that the Commission violated the notion of Community interest and committed manifest errors of appraisal, erred in law and violated its duty to state reasons.

(¹) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ 2004 L 123, p. 18).

Action brought on 2 April 2007 — MarketTools v OHIM — Optimus-Telecomunicações (ZOOMERANG)

(Case T-105/07)

(2007/C 129/33)

Language in which the application was lodged: English

Parties

Applicant: MarketTools, Inc. (San Francisco, United-States) (represented by: W. von der Osten-Sacken and A. González Hähnlein, lawyers)

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

Other party to the proceedings before the Board of Appeal: Optimus-Telecomunicações, SA (Maia, Portugal)

Form of order sought

- Annul the decision of the Second Board of Appeal of 25 January 2007 (Appeal No R 253/2006-2);
- order Optimus-Telecomunicações S.A. to bear the costs of the proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'ZOOMERANG' for goods and services in classes 9, 35 and 42 — application No 1 603 950

Proprietor of the mark or sign cited in the opposition proceedings: Optimus-Telecomunicações, SA

Mark or sign cited: The national word and figurative marks 'BOOMERANG' for goods and services in classes 9, 16, 35, 37, 38 and 42

Decision of the Opposition Division: Opposition upheld in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal did not correctly assess the similarity of the goods and services and the trade marks in question.

Action brought on 11 April 2007 — Alcon v OHIM — *Acri.Tec (BioVisc)

(Case T-106/07)

(2007/C 129/34)

Language in which the application was lodged: English

Parties

Applicant: Alcon, Inc. (Hünenberg, Switzerland) (represented by: M. Graf, lawyer)

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

Other party to the proceedings before the Board of Appeal: *Acri.Tec AG Gesellschaft für ophthalmologische Produkte (Hennigsdorf, Germany)

Form of order sought

- The decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 February 2007 in Case R 660/2006-2 Alcon, Inc. v. OHIM (BioVisc) be annulled insofar as it dismissed the opposition of Alcon, Inc. against CTM application 3 651 809 'BioVisc';
- the Office for Harmonisation be ordered to bear its own costs and to pay those of the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: *Acri.Tec AG Gesellschaft für ophthalmologische Produkte

Community trade mark concerned: The word mark 'BioVisc' for goods in class 5 — application No 3 651 809

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

Mark or sign cited: The Community and international word marks 'PROVISC' and 'DUOVISC' for goods in class 5

Decision of the Opposition Division: Opposition upheld in its entirety