

Action brought on 8 May 2007 — Red Bull v OHIM — Grupo Osborne (TORO)**(Case T-165/07)**

(2007/C 155/70)

*Language in which the application was lodged: English***Parties***Applicant:* Red Bull GmbH (Fuschl am See, Austria) (represented by: H. O'Neill, Solicitor, V. von Bomhard and A. Renck, lawyers)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* Grupo Osborne SA (El Puerto de Santa Maria, Spain)**Form of order sought**

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 February 2007 in case No R 147/2005-4; and
- order that the costs of the proceedings be borne by the defendant.

Pleas in law and main arguments*Applicant for the Community trade mark:* Grupo Osborne SA*Community trade mark concerned:* The figurative mark 'TORO' for products and services in classes 32, 33 and 42 — application No 1 500 917*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant*Mark or sign cited:* The national word marks 'TORO ROSSO' and 'TORO ROJO' for products in class 32 as well as national, international and Community word and figurative marks containing the word 'BULL' on its own or in combination with other words for goods and services in classes 32, 33 and 42*Decision of the Opposition Division:* Opposition upheld for all the contested goods and services with the exception of 'providing of temporary accommodation'*Decision of the Board of Appeal:* Annulment of the Opposition Division's decision insofar as it upholds the opposition with regard to 'beers' (class 32), 'alcoholic beverages, except wine and beer' (class 33) and 'providing of food and drink, including bars, snack-bars, restaurants, cafeterias, public houses, canteens and wine bars' (class 42); the registration of the Community trade mark applied for can proceed for these products and services*Pleas in law:* Violation of Article 73, second sentence, of Council Regulation No 40/94, as the Board of Appeal did not set out clearly the basis of its decision in that it did not fully define the material submitted by the parties.

Furthermore, a violation of Article 8(1)(b) of the regulation, as the Board of Appeal excluded the relevance of the reputation despite the conceptual identity of the conflicting marks and the reputation of the earlier marks.

Finally, a violation of Article 8(5) of the regulation, as the Board of Appeal applied the assumption that the conflicting trade marks must be confusingly similar while it, according to the applicant, is sufficient that the consumer may 'establish a link' between the two marks.

Action brought on 18 May 2007 — Italian Republic v Commission**(Case T-166/07)**

(2007/C 155/71)

*Language of the case: Italian***Parties***Applicant:* Italian Republic (represented by: Paolo Gentili, Avvocato dello Stato)*Defendant:* Commission of the European Communities**Form of order sought**

- Annul Notice of Open Competition EPSO/AD/94/07 for the drawing up of a reserve list for the recruitment of 125 Administrators (AD5) in the field of information, communication and the media;
- annul Notice of Open Competition EPSO/AST/37/07 for the drawing up of a reserve list for the recruitment of 110 Assistants (AST3) in the field of communication and information.

Pleas in law and main argumentsThe pleas in law and main arguments are similar to those relied on in Case T-156/03 *Spain v Commission*.