

Fourth, the applicant submits that the Board committed an error of law by imposing a requirement that the mark be striking, imaginative or creative in order to avoid the objections under Article 7(1)(b) CTMR.

**Action brought on 17 August 2007 — gardeur v OHIM — Blue Rose (g)**

(Case T-310/07)

(2007/C 247/59)

*Language in which the application was lodged: English*

#### Parties

*Applicant:* gardeur AG (Mönchengladbach, Germany) (represented by: A. Beschorner, B. Glaser, C. Thomas, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Blue Rose Inc. (Nashville Tennessee, United States)

#### Form of order sought

- annul the decision of the Second Board of Appeal No R 878/2006 2 of 15 June 2007, regarding Community trademark No 1153741 'g' in so far as it dismisses the appeal in relation to goods in Class 25;
- order the defendant to pay the costs incurred in the proceedings before the court and to order the intervener to pay the costs of the administrative proceedings before the Board of Appeal.

#### Pleas in law and main arguments

*Registered Community trade mark subject of the application for a declaration of invalidity:* The figurative mark consisting of a circle

containing the letter 'g' for goods and services in Classes 9, 25, and 41

*Proprietor of the Community trade mark:* Blue Rose Inc.

*Party requesting the declaration of invalidity of the Community trade mark:* Gardeur ag

*Trade mark right of the party requesting the declaration of invalidity:* The Community figurative mark picturing a black square containing the letter 'g' for goods and services in Class 3, 18 and 25 — application No 1153741

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

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

*Pleas in law:* Infringement of Article 4 and Article 8(1)(b) of the CTMR.

**Action brought on 28 August 2007 — National Association of Licensed Opencast Operators v Commission**

(Case T-318/07)

(2007/C 247/60)

*Language of the case: English*

#### Parties

*Applicant:* The National Association of Licensed Opencast Operators (Chester-le-Street, United Kingdom) (represented by: H. Bracegirdle, Solicitor, M. Hoskins and C. West, Barristers)

*Defendant:* Commission of the European Communities

#### Form of order sought

- The Commission Decision of 18 June 2007 be annulled.
- The Commission pay the applicant's costs.