

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* Applus Servicios Tecnológicos, S.L. (formerly Agbar Automotive, S.L.)

*Community trade mark concerned:* The figurative trade mark 'A+' for goods and services in Classes 9, 35, 36, 37, 40, 41 and 42 — application No 2 933 356

*Proprietor of the mark or sign cited in the opposition proceedings:* Lufthansa AirPlus Servicekarten GbmH

*Mark or sign cited:* The Community word mark 'Airplus International' for goods and services in Classes 9, 35, 36 and 42

*Decision of the Opposition Division:* Rejected the opposition

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

*Pleas in law:* Infringement of Articles 8(1) and 8(5) as well as Articles 73, 74 and 79 of Council Regulation (EC) No 40/94.

The applicant claims that the Board failed to evaluate the criteria of identity of goods and services as well as the similarity of the marks and disregarded the reputation enjoyed by the earlier mark. Moreover, the applicant submits that the Board has breached its duty to state the reasons on which its decision was based. Also, according to the applicant, the Board did not restrict itself to the examination of uncontested facts, evidence and arguments put forward by the parties. Furthermore, the applicant contends that its rights of due process were severely impaired by the Office's failure to inform the applicant about the replacement of the trademark's proprietor by another company. Finally, it is submitted that the Board exceeded its powers when taking into account the submissions filed by the trademark proprietor, without justification, beyond the time-limit set by the Office.

**Action brought on 27 August 2007 — Kenitex Química v OHIM**

(Case T-322/07)

(2007/C 269/92)

*Language in which the application was lodged:* Portuguese

**Parties**

*Applicant:* Kenitex Química, S.A. (Manique, Estoril (Portugal)) (represented by: M. Pardete Reis, lawyer)

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

*Other party to the proceedings before the Board of Appeal of the Office:* Chemicals International Establishment

**Form of order sought**

— annulment of the decision of the Fourth Board of Appeal of the Office of 19 June 2007, notified by fax to the applicant on 25 June 2007 in the proceedings for invalidity No 879 C 001553742/1 (Community Trade Mark Register No 1553742), to which corresponds case No R 330/2006-4 and, in consequence, declare valid Community trade mark No 1553742 'KENITEX TINTAS A QUALIDADE DA COR', applied for on 13 March 2000 and registered on 22 May 2001;

— order the defendant to pay the costs.

**Pleas in law and main arguments**

On 22 May 2001 the figurative Community trade mark 'KENITEX TINTAS A QUALIDADE DA COR' was registered for goods in Classes 1, 2 and 19 of the Nice Classification (chemicals used in industry, artificial resins, paints, varnishes, lacquers, mordants, natural resins, metals for painters; building materials (non-metallic), asphalt paving, cladding, road safety devices, glass (building)).

Chemicals International Establishment sought cancellation of the Community mark on the basis that there existed in previous registers graphic national marks 'Kenitex' for goods in Classes 2 (decorating paints) in Portugal, 'Kenitex' for goods in Classes 2 and 19 (cladding of various colours for buildings) in France and 'Kenitex' for goods in Classes 1, 2, 17 and 19 (non-inflammable and waterproof goods, paints and cladding) in the Benelux countries.

The Cancellation Division upheld the application for a declaration of invalidity and the Board of Appeal dismissed the appeal brought by the applicant against that decision, considering that there was some likelihood of confusion, given the similarity of the goods and signs.

The applicant alleges contravention of Article 8(1)(b) of Council Regulation No 40/94<sup>(1)</sup>, taking the view that there is no likelihood of confusion between the two signs and the applicant's sign corresponds to its business name (that of the company) and name of the establishment registered in Portugal with the National Institute of Industrial Property.

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