

Action brought on 13 September 2007 — SOMM v OHIM**(Case T-351/07)**

(2007/C 283/55)

*Language of the case: Italian***Parties***Applicant:* SOMM Srl (San Mauro T.se, Italy) (represented by M. Ferro, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)**Form of order sought**

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 28 June 2007 in Case R 1653/2006-1 concerning Community trade mark application No 4 837 746;

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Three-dimensional trade mark described as follows: 'Three-dimensional whole constituted by a large number of tubular posts of metal, placed at a distance from and aligned with each other, tapering and substantially curved at the bend, each having a base line, fixed to the ground, essentially vertical and a line with open extremities slightly inclined towards the top, a large number of tubular parts of metal, placed at a distance from and parallel with each other, fixed on inclined lines of those posts, and a cover to provide shade fixed on said tubular parts, the whole forming a shaded shelter'; Application No 4 837 736 for goods in Classes 6 and 19.

Decision of the Examiner: Refusal of the application for registration.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Error in determining the relevant public and the sector of reference and also the acquisition of distinctive

character of the mark in question pursuant to Article 7(3) of Regulation (EC) No 40/94 on the Community trade mark.

Action brought on 17 September 2007 — Publicare Marketing v OHIM (Publicare)**(Case T-358/07)**

(2007/C 283/56)

*Language of the case: German***Parties***Applicant:* Publicare Marketing Communications GmbH (Frankfurt, Germany) (represented by B. Mohr, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)**Form of order sought**

— Annul the Decision of the Fourth Board of Appeal of 27 June 2007 in Case R 157/2007-4;

— Order OHIM to have the mark 'Publicare', application No 4 733 069, entered in the register.

Pleas in law and main arguments

Community trade mark concerned: the verbal mark 'Publicare' for services in Classes 35, 38 and 42 (application No 4 733 069).

Decision of the Examiner: refusal of the application.

Decision of the Board of Appeal: dismissal of the appeal.

Pleas in law: Breach of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 ⁽¹⁾.

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