

**Action brought on 21 November 2007 — RedEnvelope v OHIM — Red Letter Days (REDENVELOPE)**

(Case T-416/07)

(2008/C 8/46)

*Language of the case: English*

**Parties**

*Applicant:* RedEnvelope Inc. (San Francisco, United States) (represented by: A. Poulter, Solicitor)

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

*Other party to the proceedings before the Board of Appeal:* Red Letter Days Ltd (London, United Kingdom)

**Form of order sought**

- Annul the decision of the First Board of Appeal dated 14 September 2007, No R 765/2005-1, in so far as the decision provided for the admission of new evidence in support of the grounds of opposition;
- order that the defendant pays the applicant's costs of this appeal.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'REDENVELOPE' for services in classes 35 and 42 — application No 1 601 392

*Proprietor of the mark or sign cited in the opposition proceedings:* Red Letter Days Ltd

*Mark or sign cited:* The registered and non-registered national word and figurative marks 'RED LETTER', 'RED LETTER DAYS' and 'RED LETTER DAYS PLC' for goods and services in classes 9, 14, 16, 18, 21, 22, 25, 26, 33, 36, 39, 41, 42, 43 and 44

*Decision of the Opposition Division:* Opposition partially upheld

*Decision of the Board of Appeal:* Annulment of the Opposition Division's decision and remittal of the case to the Opposition Division for further consideration in so far as it regards Article 8(4) of Council Regulation No 40/94

*Pleas in law:* Violation of Article 74(2) of Council Regulation No 40/94, as the Board of Appeal admitted new evidence, which will allow the Opposition Division to make a decision based on evidence, which was not available earlier in the proceedings and to which the applicant has not had an opportunity to respond before the Opposition Division.

**Action brought on 16 November 2007 — Lodato Gennaro & C. v Commission**

(Case T-417/07)

(2008/C 8/47)

*Language of the case: Italian*

**Parties**

*Applicant:* Lodato Gennaro & C. Spa (Castel San Giorgio, Italy) (represented by: M.A. Calabrese, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Order the annulment of Commission Decision SG/E/3/MIB/frw D(2007) 8690 of 8 October 2007;
- Order the Commission to pay the costs.

**Pleas in law and main arguments**

The action is brought against the Commission decision of 8 October 2007, which refused access to certain documents sent to the Commission by the Italian Government in the context of a preliminary examination of State aid, Cases No 701/98 and 824/01, with reference to the opposition to disclosure expressed by the Italian Government following its consultation by Commission staff.

In support of its claims, the applicant alleges infringement and misapplication of Article 4(5) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>(1)</sup>. It claims in this regard that the Commission erred in its interpretation of that provision, by granting Member States the power to prohibit the disclosure of documents originating from the Member State and held by Community institutions.

<sup>(1)</sup> OJ L 145, 31.5.2001, p. 43.