

The applicant, the owner-operator of a service station which had concluded a supply contract with REPSOL CPP claims that since 19 November 2007, the date on which it received notification from the monitoring trustee of its inclusion in Annex I of REPSOL CPP's commitments, the contested decision directly and individually concerns it.

In support of its claims, the applicant complains, first of all, that the Commission infringed Article 9 of Regulation 1/2003. In particular, the applicant claims that the Commission, although aware of the correct interpretation of the competition rules relating to time limits, accepted the commitments proposed by REPSOL CPP, going beyond and infringing the aim of Article 9 of Regulation 1/2003. In addition, the applicant claims in that context that the contested decision infringes Article 9 of Regulation 1/2003 and the principle of proportionality since the commitments accepted by the Commission were not effective to give an appropriate response to the concerns expressed by the applicant.

Second, the applicant relies on infringement of the principle according to which persons subject to Community law may not benefit from their own unlawful acts or become enriched without just cause.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

**Action brought on 28 January 2008 — Fusco v OHIM —  
Fusco International (FUSCOLLECTION)**

(Case T-48/08)

(2008/C 92/74)

*Language in which the application was lodged: Italian*

**Parties**

*Applicant:* Vincenzo Fusco (represented by: B. Saguatti, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Antonio Fusco International SA, Luxembourg (Lugano branch) (Lugano, Switzerland)

**Form of order sought**

— annul the decision of the Second Board of Appeal of 24 October 2007 and amend it to the effect that the action brought by the applicant before the Board of Appeal should be considered to be well founded and, consequently, the opposition should be upheld;

— order OHIM and the intervening party, Antonio Fusco International SA, to pay the costs of the present proceedings and those of the proceedings before the Board of Appeal and the Opposition Division.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Antonio Fusco International SA, Luxembourg (Lugano branch)

*Community trade mark concerned:* Figurative mark FUSCOLLECTION (application for registration No 1.503.366) in respect of goods in Classes 9, 18 and 25

*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant

*Mark or sign cited in opposition:* Community trade mark (No 727.375) and Italian trade mark (No 489.262) ENZO FUSCO in respect of goods in Class 25

*Decision of the Opposition Division:* Rejection of the opposition

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

*Pleas in law:* Infringement of Art 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark

**Appeal brought on 5 February 2008 by Commission of the  
European Communities against the judgment of the Civil  
Service Tribunal delivered on 22 November 2007 in Case  
F-109/06, Dittert v Commission**

(Case T-51/08 P)

(2008/C 92/75)

*Language of the case: French*

**Parties**

*Appellant:* Commission of the European Communities (represented by G. Berscheid and K. Herrmann, acting as Agents)

*Other party to the proceedings:* Daniel Dittert (Luxembourg, Grand Duchy of Luxembourg)

**Form of order sought by the appellant**

— Annul the judgment of the Civil Service Tribunal of 22 November 2007 in Case F-109/06 *Dittert v Commission* and refer the case back to the Civil Service Tribunal;  
— order the respondent to pay the costs.