

Article 76(1)(f) of the said regulation as the Board of Appeal erred in not taking into account the affidavit of the applicant's managing director; infringement of Article 74(2) of the said regulation and of Rul 22(1) and (2) of Commission Regulation No 2868/95 ⁽¹⁾ as the further evidence submitted at the appeal's stage of the opposition proceedings is admissible and has to be taken into account when assessing the genuine use of the opposition mark; infringement of applicant's right to be heard as the Board of Appeal should have taken into account evidence of use submitted after the time limit.

⁽¹⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 11 June 2008 — Lemans v OHIM — Stephen Turner (ICON)

(Case T-218/08)

(2008/C 197/57)

Language in which the application was lodged: English

Parties

Applicant: Lemans Corporation (Janesville, United States) (represented by: M. Cover, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Stephen Turner (Luddington, United Kingdom)

Form of order sought

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 March 2008 in case R 589/2007-2;
- declare that the opposition be dismissed and that Community trade mark concerned may proceed to registration; and
- order the other party to the proceedings before the Board of Appeal to pay the costs, including the appeals before the Board of Appeal and the Court of First Instance.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'ICON' for goods and services in classes 9, 18 and 25 — application No 2 197 366

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited: The national word mark 'IKON' for goods in class 9 — UK trade mark registration No 2 243 676

Decision of the Opposition Division: Rejection of the application in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The Board of Appeal erred in its finding that the other party to the proceedings before it had *locus standi* to file the opposition.

Action brought on 13 June 2008 — Impala v Commission

(Case T-229/08)

(2008/C 197/58)

Language of the case: English

Parties

Applicant: Independent Music Publishers and Labels Association (Impala, international association) (Brussels, Belgium) (represented by: S. Crosby, J. Golding, Solicitors, and I. Wekstein, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- annul the Commission's Decision of 3 October 2007 in Case No COMP/M.3333-Sony/BMG declaring a concentration compatible with the common market and the functioning of the EEA Agreement, in accordance with Article 8 (2) of Council Regulation (EEC) No 4064/89 ⁽¹⁾;
- order the Commission to pay the costs.