

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Schwarzbräu GmbH (Zusmarshausen, Germany)

**Action brought on 17 June 2008 — Asenbaum Fine Arts v OHIM (WIENER WERKSTÄTTE)**

(Case T-230/08)

(2008/C 223/84)

*Language of the case: German*

### Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 April 2008 (Case R 1124/2004-4);
- cancel Community trade mark No 505 503 'Alaska' entirely, on account of the existence of absolute grounds for refusal;
- order the defendant to pay the costs;
- in the alternative to the second head of claim, declare Community trade mark No 505 503 'Alaska' invalid in respect, at least, of the following goods: 'Mineral and aerated waters and other non-alcoholic drinks in class 32'.

### Pleas in law and main arguments

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* Word mark 'Alaska' for goods in class 32 (Community trade mark No 505 503).

*Proprietor of the Community trade mark:* Schwarzbräu GmbH.

*Applicant for the declaration of invalidity:* The applicant.

*Decision of the Cancellation Division:* Application for a declaration of invalidity of the trade mark concerned granted in part.

*Decision of the Board of Appeal:* Annulment of the contested decision and dismissal of the application for a declaration of invalidity of the trade mark concerned.

*Pleas in law:* Infringement of Article 7(1)(b), (c) and (g) of Regulation (EC) No 40/94 <sup>(1)</sup>.

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

### Parties

*Applicant:* Asenbaum Fine Arts Ltd (London, United Kingdom) (represented by: P. Vögel, lawyer)

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

### Form of order sought

- Alter the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 10 April 2008 (R 1573/2006-4) so as to allow the applicant's appeal of 29 November 2006 in its entirety, or in the alternative, to allow the appeal for Classes 6, 11 (excluding lamps (electric), fitted lamps, ceiling lamps and floor lamps), 14 (excluding chocolates), 16, 20, 21 (excluding chocolates) and 34;

In the alternative annul the contested decision and refer the matter back to the Office for Harmonisation in the Internal Market to complete the proceedings;

- Order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings, including the costs of the appeal proceedings.

### Pleas in law and main arguments

*Community trade mark concerned:* Word mark 'WIENER WERKSTÄTTE' for goods in Classes 6, 11, 14, 16, 20, 21 and 34 (Application No 4 133 501).

*Decision of the Examiner:* Application rejected.

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

*Pleas in law:* Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 <sup>(1)</sup> in that the trade mark applied for is neither descriptive nor devoid of distinctive character.

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