

Action brought on 30 June 2008 — Rath v OHIM — Portela & Ca. (DIACOR)**(Case T-258/08)**

(2008/C 223/95)

*Language in which the application was lodged: English***Parties***Applicant:* Matthias Rath (Cape Town, South Africa) (represented by: U. Vogt, C. Kleiner and S. Ziegler, lawyers)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* Portela & Ca., SA (Mamede do Coronado, Portugal)**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 30 April 2008 in case R 1630/2006-2; and
- Order the defendant and, if the case may be, the other party to the proceedings before the Board of Appeal to pay the costs.

Pleas in law and main arguments*Applicant for the Community trade mark:* The applicant*Community trade mark concerned:* The word mark 'DIACOR' for goods and services in classes 5, 16 and 41*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:* Portuguese trade mark registration No 137 311 of the mark 'DIACOL' for goods in class 79, in accordance with the national classification of goods in force at the time of registration*Decision of the Opposition Division:* Upholding of the opposition for all the contested goods in class 5*Decision of the Board of Appeal:* Dismissal of the appeal*Pleas in law:* (i) Infringement of Article 22(6) of Commission Regulation No 2868/95 ⁽¹⁾ as several documents submitted by the other party to the proceedings before the Board of Appeal were not in English and no translation had been provided to the applicant in order to assess the content of the evidence of use; (ii) Infringement of Article 43(2) and (3) of Council Regulation No 40/94 as the Board of Appeal erred in its opinion that the

other party to the proceedings before it had submitted sufficient evidence for the proof of use of the earlier mark in Portugal for all the goods for which it has been registered; and (iii) Infringement of Article 8(1) of Council Regulation No 40/94 as the conflicting trade marks show no visual, phonetic or conceptual similarities, such as to trigger a likelihood of confusion.

⁽¹⁾ Regulation (EC) No 2868/1995 of the Commission 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 3 July 2008 — Indo Internacional v OHIM — Visual (VISUAL MAP)**(Case T-260/08)**

(2008/C 223/96)

*Language in which the application was lodged: English***Parties***Applicant:* Indo Internacional, SA (Sant Cugat del Vallès, Spain) (represented by: X. Fàbrega Sabaté and M. Curell Aguilà, lawyers)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* Visual SA (Saint Apollinaire, France)**Form of order sought**

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 April 2008 in case R 700/2007-1; and
- Order the defendant to pay the costs.

Pleas in law and main arguments*Applicant for the Community trade mark:* The applicant*Community trade mark concerned:* The word mark 'VISUAL MAP' for services in class 44 — application No 393 2936*Proprietor of the mark or sign cited in the opposition proceedings:* The other party to the proceedings before the Board of Appeal