

**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 16 June 2008 in case R 1591/2007-2;
- Order the defendant to pay the costs; and
- Take any further action as the Court may deem appropriate.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The other party to the proceedings before the Board of Appeal

*Community trade mark concerned:* The figurative mark 'nollie' for goods and services in classes 3, 9, 11, 14, 18, 20, 25 and 26 — application No 4 601 621

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

*Mark or sign cited:* International trade mark registration No 839 740 of the word mark 'NOLI' for goods in classes 3, 18, 24 and 25; United Kingdom trade mark registration No 2 361 525 of the word mark 'NOLI' for goods in classes 3, 18, 24 and 25.

*Decision of the Opposition Division:* Allowed the opposition and rejected the application in its entirety

*Decision of the Board of Appeal:* Partial annulment of the contested decision

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal failed to find that there is a likelihood of confusion between the conflicting trade marks with respect to all the contested goods; infringement of Article 74(1) of Council Regulation No 40/94 as the Board of Appeal failed or neglected to take into account properly the facts, evidence and arguments submitted.

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**Action brought on 28 August 2008 — Hidalgo v OHIM — Bodegas Hidalgo — La Gitana (HIDALGO)**

(Case T-365/08)

(2008/C 272/93)

*Language in which the application was lodged:* Spanish

**Parties**

*Applicant:* Emilio Hidalgo, SA (Jerez de la Frontera, Spain) (represented by: Esteve Sanz, 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:* Bodegas Hidalgo — La Gitana, SA (Sanlúcar de Barrameda, Cadiz, Spain)

**Form of order sought**

- Annul the decision of the Fourth Board of Appeal of OHIM, of 11 June 2008, in Case R 1329/2007-4, notified to the applicant on 18 June 2008;
- Order the defendant and, where appropriate, the intervening party, to pay the costs of the proceedings before the Court of First Instance and those of the proceedings before the Board of Appeal.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Emilio Hidalgo, SA.

*Community trade mark concerned:* Verbal mark 'HIDALGO' (Application No 4.032.108) for goods in Class 33 'alcoholic beverages (except beers)'.

*Proprietor of the mark or sign cited in the opposition proceedings:* Bodegas Hidalgo — La Gitana, SA.

*Mark or sign cited in opposition:* Spanish verbal mark 'HIDALGO' for goods in Class 33 ('Wines in general and especially those covered by the DDOO Jerez and Manzanilla').

*Decision of the Opposition Division:* Opposition upheld and application for registration rejected.

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

*Pleas in law:* Infringement of Articles 73 and 61(2) of Regulation (EC) No 40/94 on the Community trade mark (CTM) and the applicant's rights of the defence, by basing the contested decision on a document on which the applicant was unable to comment.

The applicant also alleges breach of:

- Article 8(1)(a) of the CTM, in so far as the contested decision considers that wines are identical to other alcoholic beverages in Class 33, other than wines.
  - Articles 4(1) and 5(1) of Directive EC/89/104 to approximate the laws of the Member States relating to trade marks and infringement of the principle of coexistence and equivalence between national and Community marks.
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