

*Decision of the Cancellation Division:* Rejection of the application for a declaration of invalidity of the trade mark concerned.

*Decision of the Board of Appeal:* Annulment of the decision of the Cancellation Division and granting of the application for a declaration of invalidity of the trade mark concerned.

*Pleas in law:* Infringement of Article 7(1)(b) and (c) of Council Regulation No 40/94, since the trade mark 'Notfall Bonbons' is not descriptive of the protected goods, nor does it lack the requisite distinctive character.

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**Action brought on 10 September 2008 — Aldi Einkauf v OHIM — Illinois Tools Works (TOP CRAFT)**

(Case T-374/08)

(2008/C 313/63)

*Language in which the application was lodged:* German

**Parties**

*Applicant:* Aldi Einkauf GmbH & Co. OHG (Essen, Germany) (represented by: N. Lützenrath, U. Rademacher, L. Kolks and C. Fürsen, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Illinois Tools Works, Inc. (Glenview, United States)

**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 25 June 2008 in Case No R 952/2007-2;
- order the defendant to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Aldi Einkauf GmbH & Co. OHG

*Community trade mark concerned:* the figurative mark 'TOP CRAFT' for goods in Classes 1 and 3 (Application No 3 444 767)

*Proprietor of the mark or sign cited in the opposition proceedings:* Illinois Tools Works, Inc.

*Mark or sign cited in opposition:* The national figurative marks 'krafft' for goods in Classes 1 and 3

*Decision of the Opposition Division:* Opposition upheld in part

*Decision of the Board of Appeal:* Annulment of the Opposition Division's decision in so far as the opposition in respect of the goods 'Chemicals used in agriculture, horticulture and forestry' in Class 1 was upheld

*Pleas in law:* Infringement of Article 8(1)(b) and Article 43(2) and (3) of Council Regulation No 40/94 and of Rule 22(3) of Commission Regulation No 2868/95 because:

- the documents submitted by the opponent cannot prove use of the opposing marks,
- there are significant graphical differences between the marks at issue,
- the word element 'TOP' is not descriptive and of slight distinctive character, and
- owing to the clear graphical differences and the additional word element 'TOP' in the mark applied for, a likelihood of confusion may be ruled out even if the goods are identical or similar.

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**Action brought on 11 September 2008 — Mustang v OHIM**

(Case T-379/08)

(2008/C 313/64)

*Language in which the application was lodged:* German

**Parties**

*Applicant:* Mustang-Bekleidungswerke GmbH + Co. KG (Künzelsau, Germany) (represented by: A. Klett and K. Weimer, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Decathlon SA (Villeneuve d'Ascq, France)

**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 July 2008 in Case R 859/2007-4;
- order the defendant to pay the costs of these proceedings and the proceedings before the Board of Appeal, including the applicant's costs in both proceedings.