

- authorise the publication of the application for the registration of Community trade mark 4829321 in respect of those goods as well and
- order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Representation of a dog for goods in Classes 18, 25 and 31 — Application No 4 829 321

Decision of the Examiner: Rejection of the application

Decision of the Board of Appeal: Annulment of the contested decision as regards 'clothing, footwear and headgear; belts' in Class 25

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation No 40/94, as the mark applied for is neither directly nor exclusively descriptive, and has a sufficiently distinctive character.

Action brought on 15 September 2008 — Nadine Trautwein Rolf Trautwein v OHIM (Representation of a horse)

(Case T-386/08)

(2008/C 313/67)

Language in which the application was lodged: German

Parties

Applicant: Nadine Trautwein Rolf Trautwein GbR, Research Development (Leopoldshohe, Germany) (represented by C. Zychowski, A. Nordemann and A. Dustmann)

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

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 7 July 2008 in Case R 1730/2007-1 together with the decision of the examiner of 25 September 2007 and
- to authorise the publication of the application for the registration of Community trade mark 4829354;
- order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Representation of a horse for goods in Classes 18, 25 and 31 — Application No 4 829 354

Decision of the Examiner: Rejection of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation No 40/94 as the trade mark applied for is neither directly nor exclusively descriptive, and has a sufficiently distinctive character.

Action brought on 22 September 2008 — Chocoladefabriken Lindt & Sprüngli v OHIM (Shape of a chocolate rabbit)

(Case T-395/08)

(2008/C 313/68)

Language in which the application was lodged: German

Parties

Applicant: Chocoladefabriken Lindt & Sprüngli AG (Kilchberg, Switzerland) (represented by R. Lange, E. Schalast and G. Hild, lawyers)

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

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 18 July 2008 (Case No R 419/2008-4);
- order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the three-dimensional mark in the form of a chocolate rabbit for goods in Class 30 — Application No 3 664 372

Decision of the Examiner: Rejection of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The mark applied for is unusual, has the function of indicating origin and has the necessary distinctive character.
