

Action brought on 30 September 2008 — Grain Millers v OHIM — Grain Millers (GRAIN MILLERS)

(Case T-430/08)

(2008/C 313/83)

*Language in which the application was lodged: English***Parties***Applicant:* Grain Millers, Inc. (Eden Prairie, United States) (represented by: L.-E. Ström, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* Grain Millers GmbH & Co. KG (Bremen, Germany)**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 23 July 2008 in case R 478/2007-2; and
- Order 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 'GRAIN MILLERS' for goods in classes 29, 30 and 31 — application No 3 650 256*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:* German 'business designation' 'GRAIN MILLERS' and its figurative version*Decision of the Opposition Division:* Partially rejected the opposition*Decision of the Board of Appeal:* Partial dismissal of the appeal*Pleas in law:* Infringement of Article 8(4) of Council Regulation No 40/94 as the Board of Appeal has overestimated the value of the evidence submitted by the other party to the proceedings before the Board of Appeal in order to substantiate prior rights over the earlier trade mark.**Action brought on 1 October 2008 — Bulur Giyim Sanayi ve Ticaret Sirketi v OHIM — Denim (VIGOSS)**

(Case T-431/08)

(2008/C 313/84)

*Language in which the application was lodged: English***Parties***Applicant:* Bulur Giyim Sanayi ve Ticaret Sirketi (Istanbul, Turkey) (represented by: R. Böhm, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* A V Denim, Inc. (trading as A&V Denim, Inc.) (New York, 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 18 July 2008 in case R 1366/2007-2, insofar as it dismissed the appeal lodged by the applicant against the decision of the Opposition Division of 26 June 2007 ruling on opposition No B 923 005; and
- Order the defendant to pay the costs.

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 word mark 'VIGOSS' for goods in classes 14, 18 and 25*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant*Mark or sign cited:* International trade mark registration No 771 374 of the figurative mark 'VIGOSS' for goods in class 25