

Action brought on 3 October 2008 — Tokita Management Service v OHIM — Eminent Food (TOMATOBERRY)

(Case T-435/08)

(2008/C 313/86)

Language in which the application was lodged: English

Parties

Applicant: Tokita Management Service Corp. (Saitama, Japan) (represented by: P. Brownlow and N. Jenkins, Solicitors and A. Bryson, Barrister)

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

Other party to the proceedings before the Board of Appeal: Eminent Food BV (Bussum, Netherlands)

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 in case R 1219/2007-4; and
- Order OHIM 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 'TOMATOBERRY' for goods in class 31 — application No 3 797 909

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: Community trade mark registration No 3 344 711 of the figurative mark 'Tomberry' for goods and services in classes 31, 35 and 44

Decision of the Opposition Division: Upheld the opposition in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that the trade marks concerned are highly similar visually and conceptually; infringement of Article 8(1)(a) and/or Article 73 and/or Article 74(1) of Council Regulation No 40/94 as the Board of Appeal erred in its conclusion that the Opposition

Division's finding that the opposition must be upheld on the ground of Article 8(1)(a) of Council Regulation No 40/94 was correct.

Action brought on 6 October 2008 — CDC Hydrogene Peroxide v Commission

(Case T-437/08)

(2008/C 313/87)

Language of the case: German

Parties

Applicant: CDC Hydrogene Peroxide Cartel Damage Claims (CDC Hydrogene Peroxide) (represented by: R. Wirtz, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- declare that decision SG.E3/MM/psi D(2008) 6658 of the Commission of 8 August 2008 is void pursuant to Article 231(1) EC;
- order the defendant to pay the applicant's necessary costs under Article 87(2) of the Rules of Procedure of the Court of First Instance.

Pleas in law and main arguments

The applicant, which brings actions for compensation of undertakings injured by the European hydrogen peroxide cartel, challenges the decision of the Commission of 8 August 2008, by which its application on the basis of Article 2(1) of Regulation (EC) No 1049/2001⁽¹⁾ for full access to the statement of contents of the case-file in Case COMP/F/38.620 — *Hydrogen peroxide and perborate* was refused.

In support of its claims the applicant complains of the infringement of the first and third indent of Article 4(2) of Regulation (EC) No 1049/2001, as the exceptions contained in those provisions were misinterpreted or misapplied.

The applicant relies on four pleas in law in that regard.