

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 5 November 2008 — Neoperl Servisys AG v OHIM (HONEYCOMB)

(Case T-256/06) ⁽¹⁾

(Community trade mark — Application for the Community word mark HONEYCOMB — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94)

(2008/C 327/39)

Language of the case: German

Parties

Applicant: Neoperl Servisys AG (Reinach, Switzerland) (represented by: H. Börjes-Pestalozza, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: R. Pethke, acting as Agent)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 17 July 2006 (Case R 1388/2005-4) concerning an application to register the word mark HONEYCOMB as a Community trade mark.

Operative part of the judgment

The Court:

1. *dismisses the action;*
2. *orders Neoperl Servisys AG to pay the costs.*

⁽¹⁾ OJ C 261 of 28.10.2006.

Judgment of the Court of First Instance of 4 November 2008 — Group Lottuss Corp v OHIM — Ugly (COYOTE UGLY)

(Case T-161/07) ⁽¹⁾

(Community trade mark — Opposition procedure — Application for the figurative Community mark COYOTE UGLY — Earlier Community word mark COYOTE UGLY — Relative grounds for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

(2008/C 327/40)

Language of the case: Spanish

Parties

Applicant: Group Lottuss Corp., SL (Barcelona, Spain) (represented by: J. Grau Mora, A. Angulo Lafora, M. Ferrándiz Avendaño and J. Arribas García, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Laporta Insa, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Ugly, Inc. (Cornwall, New York, United States) (represented by: S. Malynicz, barrister, M. Blair and C. Balme, solicitors)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 2 March 2007 (Joined Cases R 165/2006-2 and R 194/2006-2) concerning an opposition procedure between Ugly Inc. and Group Lottuss Corp., SL.

Operative part of the judgment

The Court:

1. *dismisses the action;*
2. *orders Group Lottuss Corp., SL to bear all its own costs, to pay four fifths of the costs of the Office for Harmonisation in the Internal Market(Trade Marks and Designs)(OHIM) and to pay four fifths of the costs of Ugly Inc.;*
3. *orders Ugly Inc. to bear one fifth of its own costs and to pay one fifth of OHIM's costs.*

⁽¹⁾ OJ C 155 of 7.7.2007.