

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 28 August 2008 in case R 403/2006-4; and
- Order the defendant and the other party to the proceedings before the Board of Appeal to bear their own costs and those incurred by the applicant.

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 figurative mark 'GSS GALILEO SISTEMAS Y SERVICIOS', for goods and services in classes 9 and 38.

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: Community trade mark application No 170 167 of the word mark 'GALILEO' for goods and services in classes 9, 39, 41 and 42; Community trade mark registration No 2 157 501 of the word mark 'GALILEO' for goods and services in classes 9, 16, 35, 38, 39, 41 and 42; Community trade mark registration No 516 799 of the figurative mark 'powered by Galileo' for goods and services in classes 9, 16, 35, 38, 39, 41 and 42; Community trade mark registration No 330 084 of the figurative mark 'GALILEO INTERNATIONAL' for goods and services in classes 9, 39, 41 and 42; Community trade mark registration No 2 159 069 of the figurative mark 'GALILEO INTERNATIONAL' for goods and services in classes 9, 16, 35, 38, 39, 41 and 42; Earlier signs protected in various Member States namely, a non-registered trade mark, a trade name, and a sign, all used in the course of trade for the specified goods and services.

Decision of the Opposition Division: Upheld the opposition against the contested goods and services

Decision of the Board of Appeal: Annulled the decision of the Opposition Division

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as: (i) the Board of Appeal failed to carry out a global assessment of the Community trade mark concerned in relation to the word only trade marks for 'GALILEO'; (ii) the Board of Appeal erred in its assessment of the Community trade mark concerned in relation to the earlier composite trade marks containing the word 'GALILEO'; and (iii) the Board of Appeal erred in its assessment of the similarity of the goods; Infringement of Article 63(2) of Council Regulation 40/94 as the Board of Appeal failed to remit the case back to the Opposition Division for a finding under Articles 8(4) and 8(5) of Council Regulation 40/94.

Action brought on 14 November 2008 — Sun World International v OHIM — Kölla Hamburg Overseas Import (SUPERIOR SEEDLESS)

(Case T-493/08)

(2009/C 19/62)

Language in which the application was lodged: English

Parties

Applicant: Sun World International LLC (Bakersfield, United States) (represented by: M. Holah, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Kölla Hamburg Overseas Import GmbH & Co. KG (Hamburg, Germany)

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 3 September 2008 in case R 1378/2007-1; and
- Order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'SUPERIOR SEEDLESS' for goods in class 31 — Community trade mark registration No 610 980

Proprietor of the Community trade mark: The applicant

Party requesting the declaration of invalidity of the Community trade mark: The other party to the proceedings before the Board of Appeal

Decision of the Cancellation Division: Partial invalidity of the Community trade mark concerned

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Articles 7(3) and 51(2) of Council Regulation No 40/94 as the Board of Appeal: (i) wrongly identified the relevant public; (ii) wrongly refused to allow a withdrawal of the Community trade mark registration in respect of some of the goods in the specification; (iii) made an unlawful assumption based on the lack of a United Kingdom or Irish registration; and (iv) incorrectly assessed the evidence filed.