

Operative part of the order

1. *The application for interim relief is dismissed.*
2. *The costs are reserved.*

Action brought on 8 December 2008 — Tuzzi fashion v OHIM — El Corte Inglés (Emidio Tucci)

(Case T-535/08)

(2009/C 55/52)

*Language in which the application was lodged: English***Parties***Applicant:* Tuzzi fashion GmbH (Fulda, Germany) (represented by: R. Kunze and G. Würtenberger, lawyers)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* El Corte Inglés, SA (Madrid, Spain)**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 September 2008 in case R 1561/2007-2; 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 figurative mark 'Emidio Tucci', for goods in class 25*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant*Mark or sign cited:* German trade mark registration No 1 078 843 of the word mark 'TUZZI' for goods in class 25; International trade mark registration No 496 835 with effect in Austria, France, the Benelux countries and Poland of the word mark 'TUZZI' for goods in class 25; Company name 'TUZZI FASHION GMBH' used in the course of trade in Germany for clothing.*Decision of the Opposition Division:* Rejected the opposition in its entirety*Decision of the Board of Appeal:* Dismissal of the appeal*Pleas in law:* Infringement of Article 8(1) and (4) of Council Regulation 40/94 as the Board of Appeal wrongly assessed the likelihood of confusion between the trade marks concerned;

Infringement of Article 73 of Council Regulation 40/94 as the Board of Appeal failed to address in a comprehensive manner the arguments put forward by the applicant and to objectively state the reasons on which its decision has been based; Infringement of Article 74 of Council Regulation 40/94 as the Board of Appeal failed to restrict itself in its examination to the facts, evidence and arguments put forward by the parties; Infringement of Article 79 of Council Regulation 40/94 since in its assessment of the defence of abuse of rights raised by the applicant the Board of Appeal failed to take into account general principles of procedural law recognized in the Member States.

Action brought on 9 December 2008 — Huvis v Council

(Case T-536/08)

(2009/C 55/53)

*Language of the case: English***Parties***Applicant:* Huvis Corporation (Seoul, Republic of Korea) (represented by: J.-F. Bellis, F. Di Gianni, R. Antonini, lawyers)*Defendant:* Council of the European Union**Form of order sought**

- annul Council Regulation (EC) No 893/2008 of 10 September 2008, maintaining the anti-dumping duties on imports of polyester staple fibres originating in Belarus, the People's Republic of China, Saudi Arabia and Korea following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 ⁽¹⁾, insofar as it does not repeal the anti-dumping duty applicable to the applicant as of 29 December 2006, that is, the date on which imports of polyester staple fibres originating in Taiwan and Malaysia were subjected to provisional anti-dumping duties, which the Commission decided not to collect in its Decision No 2007/430/EC of 19 June 2007 ⁽²⁾;
- order the Council to bear the costs of these proceedings.

Pleas in law and main arguments

By means of this application the applicant, a Korean-based company, seeks partial annulment of Council Regulation No 893/2008 insofar as it does not repeal the anti-dumping duty applicable to the polyester staple fibres (PSF) manufactured by the applicant and originating in Korea as of 29 December 2006. The applicant submits that the same treatment as was applied in Commission Decision No 2007/430/EC to the PSF originating in Taiwan and Malaysia should be applied to the PSF originating in Korea. Therefore, in the applicant's view, the anti-dumping duty should be repealed as of the same date with respect to the PSF originating in Korea.