

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

of protection of the earlier marks has been determined incorrectly.

*Other party to the proceedings before the Board of Appeal of OHIM:* Swarovski AG (Triesen, Liechtenstein)

<sup>(1)</sup> Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

### Form of order sought

— Annul the decision of the First Board of Appeal of 9 November 2008 in Case R 0348/2008-1;

— dismiss the appeal;

— order the intervener to pay the costs of the proceedings, including the costs of the appeal proceedings.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* Daniel Swarovski

*Community trade mark concerned:* Word mark 'Daniel Swarovski Privat' for goods and services in classes 3, 4, 8, 9, 15, 16, 18, 20, 21, 26, 28, 29, 30, 31, 32, 33, 39 and 44 (application No 3 981 099)

*Proprietor of the mark or sign cited in the opposition proceedings:* Swarovski AG

*Mark or sign cited in opposition:* Word mark 'DANIEL SWAROVSKI' for goods and services in classes 16, 18, 21, 25 and 41 (Community trade mark No 3 895 133); word mark 'Swarovski' for goods and services in classes 2, 3, 6, 8, 9, 11, 16, 18, 19, 20, 21, 24, 25, 28, 34, 35 and 41 (Community trade mark No 3 895 091); word mark 'Swarovski' for services in class 36 (Austrian word mark No 218 795); word mark 'Swarovski' for goods in classes 11, 16, 21 and 34 (Austrian word mark No 96 389); and word mark 'Swarovski' for goods in classes 8, 9, 11, 14, 18, 21, 25 and 26 (international registration in respect of Italy No 528 189)

*Decision of the Opposition Division:* Opposition allowed in part

*Decision of the Board of Appeal:* Appeal dismissed in part

*Pleas in law:* Infringement of Article 8(1)(b) and (5) of Regulation (EC) No 40/94 <sup>(1)</sup> since there is no likelihood of confusion between the marks at issue or the requisite detriment to the earlier marks and, moreover, since the scope

### Action brought on 9 February 2009 — Alfastar Benelux v Conseil

(Case T-57/09)

(2009/C 102/31)

*Language of the case:* English

### Parties

*Applicant:* Alfastar Benelux (Ixelles, Belgium) (represented by: N. Keramidas, lawyer)

*Defendant:* Council of the European Union

### Form of order sought

— annul the Council's decision to reject the bid of the applicant, filed in response to the open call for Tender UCA-218-07 for the provision of "Technical maintenance — help desk and on site intervention services for the PC's, printers and peripherals of the general secretariat of the Council" <sup>(1)</sup> communicated to the applicant by letter dated 1 December 2008 and all further related decisions of the Council including the one to award the contract to the successful contractor;

— order the Council to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 2 937 902 or the proportion of the above amount according to the date of annulment of the above decision of the Council;

— order the Council to pay the applicant's legal costs and expenses incurred in connection with this application, even if current application is rejected.

**Pleas in law and main arguments**

In the present case the applicant seeks the annulment of the defendant's decision to reject its bid submitted in response to a call for an open tender UCA-218-07 for the provision of "Technical maintenance — help desk and on site intervention services for the PC's, printers and peripherals of the general secretariat of the Council" and to award the contract to the successful contractor. The applicant further requests compensation for the alleged damages in account of the tender procedure.

In support of its claims the applicant puts forward four pleas in law.

First, it argues that the defendant committed several manifest errors of assessment concerning: the absence of certification of the winning tenderer, the absence of NATO security clearance of the personnel of the winning tenderer, the fact that the winning tenderer did not dispose of the personnel offered, the qualifications of the personnel of the winning tenderer as opposed to those of the applicant, the knowledge transfer marks and the evaluation of the number of staff proposed by the tenderers.

Second, the applicant claims that the defendant failed to observe its obligations for equal treatment of the candidates and transparency.

Third, it submits that the call for tender included numerous inconsistencies and inaccurate information.

Last, the applicant contends that the defendant infringed its obligation to motivate its acts.

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(<sup>1</sup>) OJ 2008/S 91-122796

**Action brought on 16 February 2009 — Herhof v OHIM — Stabilator (stabilator)**

(Case T-60/09)

(2009/C 102/32)

Language in which the application was lodged: German

**Parties**

**Applicant:** Herhof-Verwaltungsgesellschaft mbH (Solms, Germany) (represented by: A. Zinnecker and T. Bösling, lawyers)

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

**Other party to the proceedings before the Board of Appeal of OHIM:** Stabilator sp. z o.o. (Gdynia, Poland)

**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 16 December 2008 in Joined Cases R 483/2008-4 and R 705/2008-4;

— Order the applicant to pay the costs.

**Pleas in law and main arguments**

**Applicant for a Community trade mark:** Stabilator sp. z o.o.

**Community trade mark concerned:** the figurative mark 'stabilator' for goods and services in Classes 19, 37 and 42, Application No 4 068 961

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

**Mark or sign cited in opposition:** the word mark 'STABILAT' for goods in Classes 1, 7, 11, 20, 37, 40 and 42

**Decision of the Opposition Division:** opposition allowed in part and application rejected in part

**Decision of the Board of Appeal:** annulment in part of the contested decision and rejection of the opposition

**Pleas in law:** Infringement of Article 8(1)(b) of Regulation (EC) No 40/94, (<sup>1</sup>) because there is a likelihood of confusion between the marks at issue or at least a likelihood of association.

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(<sup>1</sup>) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).