

**Pleas in law and main arguments**

*Community trade mark concerned:* the word mark ‘SupplementPack’ for goods and services in Classes 1, 3, 5, 41 and 42 (Application No 5 433 883)

*Decision of the Examiner:* rejection of the application

*Decision of the Board of Appeal:* dismissal of the appeal

*Pleas in law:* Infringement of Article 7(1)(b) and (c) of Council Regulation (EC) No 40/94 as the mark applied for has the requisite distinctive character and its availability does not have to be preserved

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**Action brought on 30 March 2009 — Valigeria Roncato v OHIM — Roncato (CARLO RONCATO)**

(Case T-124/09)

(2009/C 129/29)

*Language in which the application was lodged:* Italian

**Parties**

*Applicant:* Valigeria Roncato SpA (Campodarsego, Italy) (represented by: P. Perani, lawyer, and P. Pozzi, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Roncato Srl (Campodarsego, Italy)

**Forms of order sought**

— Annul the decision of the First Board of Appeal of OHIM of 23 January 2009, notified on 30 January 2009, in joined cases R 237/2008-1 and R 263/2008-1;

— Order the defendant and the other party to the proceedings to pay the costs of these proceedings, as well as those incurred in the proceedings before the Board of Appeal.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* RONCATO Srl.

*Community trade mark concerned:* Word mark “CARLO RONCATO” (registration application No 4 631 719) for goods in Classes 3, 9 and 14.

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

*Mark or sign cited in opposition:* Italian figurative mark “RV RONCATO” (No 622 773), Italian word mark “RONCATO”

(No. 510 528) and non-registered Italian figurative marks “RV RONCATO”.

*Decision of the Opposition Division:* Opposition upheld in part.

*Decision of the Board of Appeal:* Rejected the opposition and upheld the application for registration in its entirety.

*Pleas in law:* Misapplication of Article 8(4) and (5) of Regulation (EC) No 40/94 on the Community trade mark.

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**Action brought on 26 March 2009 — Gruener Janura AG v OHIM — Centum Aqua Marketing (HUNDERTWASSER)**

(Case T-125/09)

(2009/C 129/30)

*Language in which the application was lodged:* German

**Parties**

*Applicant:* Gruener Janura AG (represented by: P. Endres, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Centum Aqua Marketing GmbH (Magdeburg, Germany)

**Form of order sought**

— Reject application No 4491891 for the trade mark ‘Hundertwasser’ for the following goods and services:

Class 20: Goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics;

Class 30: Sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice; confectionery, candyfloss;

Class 31: Agricultural, horticultural and forestry products and grains not included in other classes; live animals; seeds, natural plants and flowers; foodstuffs for animals; malt; products from organic farming, flowers, arrangements, plant arrangements;

Class 35: Advertising, marketing concepts;

Class 39: Transport, packaging and storage of goods; travel arrangement, exhibition guides, city and building guides, tourist services, package holidays;

— Order the applicant to pay the costs.