

Action brought on 12 May 2009 — Poloplast v OHIM — Polypipe Building Products (P)**(Case T-189/09)**

(2009/C 167/33)

*Language in which the application was lodged: German***Parties***Applicant:* Poloplast GmbH & Co KG (Leonding, Austria) (represented by: G. Bruckmüller, 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:* Polypipe Building Products Ltd (Edlington, United Kingdom)**Form of order sought**

- Annul the contested decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 25 February 2009 or alter it in such a way that it establishes that there is no likelihood of confusion between the markets covered, and
- Order the Office for Harmonisation in the Internal Market to pay the applicant's costs.

Pleas in law and main arguments*Applicant for a Community trade mark:* Poloplast GmbH & Co KG.*Community trade mark concerned:* the figurative mark 'p' for goods and services in Classes 6, 11, 17, 19 and 42 (application No 3 148 194).*Proprietor of the mark or sign cited in the opposition proceedings:* Polypipe Building Products Ltd.*Mark or sign cited in opposition:* the figurative mark 'P' for goods in Class 17 (Community trade mark No 33 191) and the figurative mark 'P POLYPIPE' for goods in Classes 6, 11, 17, 19 and 20 (Community trade mark No 2 685 691).*Decision of the Opposition Division:* Rejection of the opposition.*Decision of the Board of Appeal:* Partial dismissal of the appeal.*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009 ⁽¹⁾), as there is no likelihood of confusion between the two marks at issue.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 13 May 2009 — Longevity Health Products v OHIM — Performing Science (5 HTP)**(Case T-190/09)**

(2009/C 167/34)

*Language in which the application was lodged: German***Parties***Applicant:* Longevity Health Products, Inc (represented by: J. Korab, 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:* Performing Science LLC**Forms of order sought**

- Declare the appeal of Longevity Health Products, Inc admissible,
- Annul the decision of the Fourth Board of Appeal of 21 April 2009 and dismiss the application by Performing Science LLC that Community trade mark No 002846483 — '5 HTP' be declared invalid, and
- Order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* the word mark '5 HTP' for goods and services in Classes 5, 16 and 35 (Community trade mark No 2 846 483).*Proprietor of the Community trade mark:* Longevity Health Products, Inc.*Applicant for the declaration of invalidity:* Performing Science LLC.*Decision of the Cancellation Division:* Application for declaration of invalidity of the trade mark concerned partially granted.*Decision of the Board of Appeal:* Dismissal of the applicant's appeal.*Pleas in law:* Infringement of Article 7(1)(d) of Regulation (EC) No 40/94 (now Article 7(1)(d) of Regulation (EC) No 207/2009 ⁽¹⁾).

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).