

**Action brought on 14 May 2009 — Amen Corner v OHIM
— Comercio Electrónico Ojal (SEVE TROPHY)**

(Case T-192/09)

(2009/C 167/35)

Language in which the application was lodged: Spanish

Parties

Applicant: Amen Corner (Madrid, Spain) (represented by: J. Calderón Chavero and T. Villate Consonni, 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: Comercio Electrónico Ojal (Madrid, Spain)

Form of order sought

- annul the decision of the Board of Appeal of OHIM of 5 March 2009 in Case R 462/2008-2 in so far as it allowed registration of a Community trade mark for goods in class 9;
- as a consequence of that annulment, refuse the application for Community trade mark 4 617 213 in its entirety;
- order OHIM, and the other parties before the Court, to pay the costs of the present proceedings should they be contested, and reject the claims of OHIM and the other parties before the Court.

Pleas in law and main arguments

Applicant for a Community trade mark: Comercio Electrónico Ojal S.L.

Community trade mark applied for: Figurative mark including the verbal component 'SEVE TROPHY' (Application No 4 617 213) for goods and services in classes 3, 9, 14, 18, 25, 28, 35 and 41.

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

Mark or sign cited in opposition: Community figurative trade marks 'SEVE TROPHY' and 'SEVE BALLESTEROS TROPHY' (No 1 541 226, No 1 980 341, No 2 068 682 and No 3 846 235) for goods and services in classes 3, 14, 25, 28, 35 and 41.

Decision of the Opposition Division: Rejection of the opposition brought under Article 8(5) of Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1994 L 11, p. 1) (replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Decision of the Board of Appeal: Appeal upheld in part.

Pleas in law: Incorrect application of Article 8(1)(b) of Regulation No 40/94.

**Action brought on 13 May 2009 — Lan Airlines v OHIM
— Air Nostrum (LÍNEAS AÉREAS DEL MEDITERRÁNEO LAM)**

(Case T-194/09)

(2009/C 167/36)

Language in which the application was lodged: Spanish

Parties

Applicant: Lan Airlines, SA (represented by: E. Armijo Chávarri and A. Castán Pérez-Gómez, 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: Air Nostrum, Líneas Aéreas del Mediterráneo, SA (Manises, Spain)

Form of order sought

- declare, in view of the lodging of this pleading and the documents attached to it, that the action against the decision of the Fourth Board of Appeal of the Office of 19 February 2009 in Case R 0107/2008-4 has been lodged within the prescribed period and in the correct form and, following the appropriate procedural steps, deliver judgment annulling the said decision and expressly order the Office to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Air Nostrum, Líneas Aéreas del Mediterráneo, SA

Community trade mark concerned: Word mark 'LÍNEAS AÉREAS DEL MEDITERRÁNEO LAM' (Application No 4 448 061) for services in class 39.

Proprietor of the mark or sign cited in the opposition proceedings: Lan Airlines, SA.

Mark or sign cited in opposition: Community word mark 'LAN' (No 3 350 899) for services in classes 35, 39 and 43; and the Community figurative mark constituted by the word 'LAN' flanked by a star (No 3 694 957) for services in class 39.

Decision of the Opposition Division: Rejection of the opposition in its entirety.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Incorrect application of Article 8(1)(b) of Regulation No 40/94 (replaced by Regulation No 207/2009).