

late; it chose for it an atypical region for which conspicuously small fields were checked; in that audit it took no account of International Standard 530 on auditing and without cause it censured the applicant for using that standard as a yardstick;

- contravened the principle of the prohibition of unequal treatment of Member States, because it carried out its audit of national checks in the other Member States on a substantially greater, and therefore more representative, sample;
- applied a measure, namely the 5 % financial correction, which, on account of the limited risk to the Fund, considering the amount of the resources assigned, is plainly disproportionate to the gravity and extent of the infringements found to exist;
- acted contrary to the principle of good faith and fairness, for its services did not challenge the correctness of the instructions providing for the use of that yardstick, or, until autumn 2005, draw the problems to the applicant's attention.

<sup>(1)</sup> OJ L 75, 21.3.2009, p. 15.

<sup>(2)</sup> Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 (OJ 2001 L 327, p. 11).

<sup>(3)</sup> Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in of Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 18, p. 18).

**Action brought on 22 May 2009 — Rügen Fisch v OHIM — Schwaaner Fischwaren (SCOMBER MIX)**

**(Case T-201/09)**

(2009/C 180/102)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Rügen Fisch AG (Sassnitz, Germany) (represented by: O. Spuhler and M. Geiz, 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:* Schwaaner Fischwaren GmbH (Schwaandorf, Germany)

**Form of order sought**

- Annul the decision of the Fourth Board of Appeal of OHIM of 20 March 2009 in Case R 230/2007-4;
- order OHIM 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 'SCOMBER MIX' for goods and services in classes 29 and 25 (Community trade mark No 3 227 031)

*Proprietor of the Community trade mark:* the applicant

*Applicant for the declaration of invalidity:* Schwaaner Fischwaren GmbH

*Decision of the Cancellation Division:* dismissal of the application for a declaration of invalidity

*Decision of the Board of Appeal:* annulment of the decision of the Cancellation Division and partial declaration of invalidity of the Community trade mark

*Pleas in law:* Infringement of Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009 <sup>(1)</sup>) on the grounds that the Community trade mark 'SCOMBER MIX' is not purely descriptive.

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

**Action brought on 25 May 2009 — Heinrich Deichmann-Schuhe GmbH & Co. v OHIM (Representation of a curved band with dotted lines)**

**(Case T-202/09)**

(2009/C 180/103)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Heinrich Deichmann-Schuhe GmbH & Co. (Essen, Germany) (represented by C. Rauscher, lawyer)

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

**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 3 April 2009 in Case R 224/2007-4; and
- Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs of the proceedings.

**Pleas in law and main arguments**

*Community trade mark concerned:* Figurative mark representing a curved band with dotted lines for goods in Classes 10 and 24 (International Registration designating the European Community, No W 0881226)

*Decision of the Examiner:* Refusal of protection