

*Proprietor of the mark or sign cited in the opposition proceedings:* Telefónica S.A.

*Mark or sign cited in opposition:* earlier Community word mark "CLARO" (No 2 017 341), for, inter alia, goods and services in Classes 9 and 38.

*Decision of the Opposition Division:* Opposition upheld.

*Decision of the Board of Appeal:* Appeal dismissed as inadmissible, since the applicant had not filed the relevant statement of grounds for the appeal.

*Pleas in law:* The applicant submits that the contested decision is contrary to the principle of functional continuity between the Opposition Division and the Board of Appeal. It argues that it was obvious that its appeal was against the Opposition Division's decision in its entirety, and that the appeal was based on the misinterpretation by the Opposition Division of Article 8(1)(b) of Regulation (EC) No 207/2009 on the Community trade mark.

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**Action brought on 11 June 2009 — United States Polo Association v OHIM — Textiles CMG (U.S. POLO ASSN.)**

(Case T-228/09)

(2009/C 180/114)

*Language in which the application was lodged:* English

**Parties**

*Applicants:* United States Polo Association (Lexington, United States) (represented by: P. Goldenbaum, T. Melchert and I. Rohr, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Textiles CMG, SA (Onteniente, Valencia, Spain)

**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 20 March 2009 in case R 886/2008-4; and
- Order the defendant to pay its own costs and those of the applicant, and, should the other party before the Board of Appeal intervene in the proceedings, order it to pay its own costs.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The word mark "U.S. POLO ASSN.", for goods in classes 9, 20, 21, 24 and 27

*Proprietor of the mark or sign cited in the opposition proceedings:* The other party to the proceedings before the Board of Appeal

*Mark or sign cited:* Spanish trade mark registration of the word mark "POLO-POLO" for goods in class 24; Community trade mark registration of the word mark "POLO-POLO" for goods in classes 24, 25 and 39

*Decision of the Opposition Division:* Upheld the opposition for all the contested goods

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

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation 40/94 (which became Article 8(1)(b) of Council Regulation 207/2009) as the Board of Appeal erred in its finding that there is a likelihood of confusion between the trade marks concerned.

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