

**Form of order sought**

- Admit the complaint filed by the applicant;
- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 July 2009 in case R 1204/2008-2 and dismiss the request for a declaration of invalidity filed by the other party to the proceedings before the Board of Appeal with regard to Community trade mark 5 244 512; and
- Order the defendant to bear the costs.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The word mark “RESVEROL”, for goods and services in classes 3, 5 and 35

*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:* National trade mark registrations of the mark “LESTEROL” for goods in class 5

*Decision of the Opposition Division:* Upheld the opposition

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

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation 207/2009 as the Board of Appeal wrongly held that there was a likelihood of confusion between the trade marks concerned.

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**Action brought on 17 September 2009 —  
Michalakopoulou Ktimatiki Touristiki v OHIM — Free  
(FREE)**

**(Case T-365/09)**

(2009/C 267/144)

*Language in which the application was lodged:* English

**Parties**

*Applicants:* Michalakopoulou Ktimatiki Touristiki AE (Athens, Greece) (represented by: A. Koliiothomas and K. Papadiamantis, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Free SAS (Paris, France)

**Form of order sought**

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 June 2009 in case R 1346/2008-1;
- Dismiss the opposition;
- Order the defendant to bear the costs before the Court of First Instance; and
- Order the other party to the proceedings before the Board of Appeal to bear the costs incurred in such proceedings.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The word mark “FREE”, for goods in class 16

*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:* French trade mark registration of the word mark “FREE” for services in class 38; French trade mark registration of the figurative mark “FREE — LA LIBERTÉ N'A PAS DE PRIX” for services in classes 35 and 38

*Decision of the Opposition Division:* Rejected the opposition

*Decision of the Board of Appeal:* Annulled the decision of the Opposition Division and rejected the Community trade mark application in its entirety

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation 207/2009 as the Board of Appeal wrongly held that there was a likelihood of confusion between the trade marks concerned; infringement of Article 75 of Council Regulation 207/2009 as the Board of Appeal failed to state reasons for its finding that there was similarity between the goods in class 16 covered by the Community trade mark concerned and services in class 38 covered by the earlier trade mark.

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