

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

*Pleas in law:* Infringement of Article 7(1)(c) of Council Regulation 207/2009 as the Board of Appeal (i) erred in relation to the meaning and syntax of the mark, as well as its aptness or otherwise as an immediate and direct descriptive term for the goods and services in question; (ii) failed to establish facts of its own motion that would show that the Community trade mark concerned was descriptive to the relevant public, even though it correctly concluded that the relevant public was specialised; and (iii) failed to take account of the public interest that underlies this ground for refusal and failed to establish on the evidence that there was, in the relevant specialised sphere, a reasonable likelihood that other traders in that sphere would wish to use the Community trade mark concerned in the future.

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**Action brought on 2 October 2009 — Ancco v OHIM — Freche et fils (ANN TAYLOR LOFT)**

(Case T-385/09)

(2009/C 282/113)

*Language in which the application was lodged:* English

**Parties**

*Applicant:* Ancco, Inc. (New York, United States) (represented by: G. Triet, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Freche et fils associés SARL (Paris, France)

**Form of order sought**

- Declare the appeal well founded;
- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 July 2009 in case R 1485/2008-1;
- Alter the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 July 2009 in case R 1485/2008-1, in favour of the registration of the Community trade mark concerned for classes 18 and 25, in addition to class 35;
- 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 mark “ANN TAYLOR LOFT”, for goods and services in classes 18, 25 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:* French trade mark registration of the mark “LOFT” for goods in classes 18 and 25

*Decision of the Opposition Division:* Allowed 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; infringement of Article 75 of Council Regulation 207/2009 as the Board of Appeal wrongly relied on evidence and reasons on which the applicant was not given the opportunity to comment.

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**Action brought on 5 October 2009 — Grúas Abril Asistencia v Commission**

(Case T-386/09)

(2009/C 282/114)

*Language of the case:* Spanish

**Parties**

*Applicant:* Grúas Abril Asistencia SL (Alicante, Spain) (represented by: R. L. García García, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Declare that the dismissal by the Spanish competition authorities and courts of the claim of the applicant, GRUAS ABRIL ASISTENCIA SL, is contrary to Articles 81 and 82 EC.
- In consequence, order the Commission of the European Communities, which adopted the contested approval, to provide the necessary measures and guarantees in order to bring such unlawful activity to an end, imposing the appropriate fines and penalties for such infringement, and entitle BAS HERMANOS SL to be compensated for the loss it suffered as a result of that infringement.