

Action brought on 16 October 2009 — Cybergun v OHIM — Umarex Sportwaffen (AK 47)**(Case T-419/09)**

(2009/C 312/60)

*Language in which the application was lodged: French***Parties***Applicant:* Cybergun (Bondoufle, France) (represented by: S. Guyot, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal of OHIM:* Umarex Sportwaffen GmbH & Co. KG (Arnsberg, Germany)**Form of order sought**

— annul the decision of the First Board of Appeal of OHIM of 5 August 2009 declaring the mark AK 47 to be invalid because of its descriptive character on the basis of Article 51(1)(a), a legal basis not referred to in the action,

— order, in accordance with Articles 87(2) and 91 of the Rules of Procedure, OHIM to pay the costs, including costs incurred by the applicant for the present proceedings, in particular the costs of translation of documents, lawyer's fees, and, if costs of travel and accommodation are appropriate; the Court is asked to assess that sum at EUR 20 000.

Pleas in law and main arguments*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* 'AK 47' for goods in Class 28 — Community trade mark No 4 528 378.*Proprietor of the Community trade mark:* the applicant*Applicant for the declaration of invalidity:* Umarex Sportwaffen GmbH & Co. KommanditGesellschaft*Decision of the Cancellation Division:* rejection of the application for a declaration of invalidity of the mark concerned*Decision of the Board of Appeal:* annulment of the decision of the Cancellation Division and declaration of invalidity of the Community trade mark*Pleas in law:*

The legal basis, namely Article 51(1)(a) of Regulation (EC) No 40/94 [now article 52(1) (a) of Regulation (EC) No 207/2009] on which the annulment of the mark was founded because of its descriptive character, was never referred to in the pleadings before the First Board of Appeal and in any event the assessment of the descriptive character of the mark is incorrect.

Action brought on 19 October 2009 — BSA v OHIM — Loblaws (PRÉSIDENT)**(Case T-420/09)**

(2009/C 312/61)

*Language in which the application was lodged: French***Parties***Applicant:* BSA (Paris, France) (represented by: D. Masson, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal of OHIM:* Loblaws, Inc.**Form of order sought**

— Annul the decision of 17 August 2009 of the Fourth Board of Appeal of OHIM, (Case R 1744/2008-4),

— Order OHIM to pay the entire costs.

Pleas in law and main arguments*Applicant for a Community trade mark:* BSA*Community trade mark concerned:* the figurative mark 'PRÉSIDENT' for goods and services in Classes 5, 29, 30 and 42 — application for registration No 2 135 200*Proprietor of the mark or sign cited in the opposition proceedings:* Loblaws, Inc.*Mark or sign cited in opposition:* the French word mark 'President's Choice' for goods in Classes 5, 30, 31 and 32 and the Community figurative mark 'PRESIDENT'S CHOICE' for goods in Classes 30, 31 and 32 (Community trade mark No 1 872 407)*Decision of the Opposition Division:* partial upholding of the opposition*Decision of the Board of Appeal:* dismissal of appeal as inadmissible

Pleas in law: infringement of Article 59 of Regulation (EC) No 40/94 [now Article 60 of Regulation (EC) No 207/2009] and of Article 71 of Regulation (EC) No 2868/95, ⁽¹⁾ and of the principle of the right to be heard in accordance with Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms.

⁽¹⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1)