

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 September 2009 in case R 1470/2008-4; and
- Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark “Wind”, for goods and services in classes 11, 12 and 37

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: German trade mark registration of the figurative mark “Wind”, for services in class 37

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 8(1)(b) of Council Regulation No 40/04 (which became Article 8(1)(b) of Council Regulation No 207/2009) as the Board of Appeal failed to conclude that there was similarity between the goods and services covered by the Community trade mark concerned.

Action brought on 7 November 2009 — Jiménez Sarmiento v OHIM — Robin and Others (Q)

(Case T-455/09)

(2010/C 24/102)

Language in which the application was lodged: Spanish

Parties

Applicant: Vicente J. Jiménez Sarmiento (Madrid, Spain) (represented by: P. M^a García-Cabrerizo del Santo, lawyer)

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

Other parties to the proceedings before the Board of Appeal of OHIM: Michel Robin (Lasnes, Belgium), Daniel Falzone (Waterloo, Belgium), Maxime Monseur (Tamines, Belgium)

Form of order sought

- Declare that, pursuant to Rule 70 implementing the Regulation on the Community trade mark, it is accepted that the period of four months for the submission of a written statement setting out the grounds of the administrative appeal which gives rise to this action expired on 16 May 2009, and consequently the submission made on 18 May 2009, that day being a Saturday, must be held to comply with the law.

- Alternatively, and in the event that the above claim is not accepted by the Court, declare that it is accepted that the applicant made an excusable error when calculating that period.

- If either of the above two claims is upheld, annul the decision of the Board of Appeal of OHIM in the case R0312/2009-4 dated 7 September 2009, declare that the written statement setting out the grounds for the administrative proceedings concerned was submitted in time, and order the Board of Appeal of OHIM to undertake an assessment of the substance of the case.

Pleas in law and main arguments

Applicant for a Community trade mark: Michel Robin, Daniel Falzone and Maxime Monseur.

Community trade mark concerned: Figurative mark consisting of the letter Q angled and with the lower part in bold (registration number 4 804 266) for goods in Classes 18, 25 and 28.

Proprietor of the mark or sign cited in the opposition proceedings: The applicant.

Mark or sign cited in opposition: Spanish figurative mark containing the word element ‘quadrata’ (No 1 770 312) for goods in Class 25.

Decision of the Opposition Division: Dismissal of the opposition as being inadmissible.

Decision of the Board of Appeal: Dismissal of the appeal as being inadmissible.

Pleas in law: Incorrect interpretation and application of Rule 70 of Regulation (EC) No 2868/95 of 13 December 1995 implementing the Regulation on the Community trade mark, departure by the defendant in the contested decision from its consistent practice, in circumstances of excusable error on the part of the applicant.
