

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

### Form of order sought

— Annul the decision of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Fourth Board of Appeal) of 7 October 2009 in Case R 531/2009-4;

— order OHIM to pay the costs.

### Pleas in law and main arguments

*Community trade mark concerned:* the figurative mark 'ReValue' for services in classes 35, 36, 42 and 45 (Application No 6 784 292)

*Decision of the Examiner:* registration rejected partially

*Decision of the Board of Appeal:* appeal dismissed

*Pleas in law:* infringement of Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 <sup>(1)</sup>, on the grounds that the sign applied for is not descriptive in relation to the services in question and is not devoid of any distinctive character; infringement of Article 75 of Regulation No 207/2009, on the ground that the contested decision was not sufficiently reasoned in the necessary sections.

<sup>(1)</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

### Action brought on 4 December 2009 — Jager & Polacek v OHIM- RT Mediasolutions (REDTUBE)

(Case T-488/09)

(2010/C 37/59)

*Language in which the application was lodged:* German

### Parties

*Applicant:* Jager & Polacek GmbH (Vienna, Austria) (represented by: A. Renck, V. von Bomhard, T. Dolde, lawyers)

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

*Other party/parties to the proceedings before the Board of Appeal of OHIM:* RT Mediasolutions s.r.o. (Brno, Czech Republic)

### 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) No R 442/2009-4 of 29 September 2009;

— order OHIM to pay the costs of the proceedings.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* RT Mediasolutions s.r.o

*Community trade mark concerned:* the word mark 'REDTUBE' for goods and services in classes 9, 38 and 41 (Application No 6 096 309)

*Proprietor of the mark or sign cited in the opposition proceedings:* Jager & Polacek GmbH

*Mark or sign cited in opposition:* a non-registered trade mark 'Redtube'

*Decision of the Opposition Division:* The notice of opposition is deemed not to have been entered

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

*Pleas in law:*

— Infringement of Article 8(2) of Regulation (EC) No 216/96 <sup>(1)</sup> in conjunction with Article 63(2) of Regulation (EC) No 207/2009 <sup>(2)</sup>, since the applicant was not given an opportunity to submit a reply;

— Infringement of Article 80(1) and (2) of Regulation No 207/2009, since the decision on the admissibility of the opposition had not been legally annulled.

— Infringement of Article 83 of Regulation No 207/2009, and more particularly of the principle of legitimate expectations, in conjunction with Article 41(3) of the same Regulation, Rule 17(1) of Regulation (EC) No 2868/95<sup>(3)</sup> and Article 8(3)(a) and (b) of Regulation (EC) No 2869/95<sup>(4)</sup>, since the applicant entertained reasonable expectations that the delay in lodging the opposition fee was remedied by the payment—within the prescribed time limit of the additional payment.

- 
- (<sup>1</sup>) Commission Regulation (EC) No 216/96 of 5 February 1996 laying down the rules of procedure of the Boards of Appeal of OHIM (OJ 1996 L 28, p. 11),
- (<sup>2</sup>) Commission Regulation (EC) No 2869/95 of 13 December 1995 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OJ 1995 L 303, p. 33)
- (<sup>3</sup>) Council Regulation (EC) No 207/2009 of February 2009 on the Community trade mark (OJ L 78 of 24.3.2009, p.1)
- (<sup>4</sup>) Commission Regulation (EC) No 2869/95 of 13 December 1995 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OJ 1995 L 303, p. 33)

---

**Action brought on 8 December 2009 — Leali v Commission**

**(Case T-489/09)**

(2010/C 37/60)

*Language of the case: Italian*

#### Parties

*Applicant:* Leali SpA (Odolo, Italy) (represented by: G. Belotti, lawyer)

*Defendant:* European Commission

#### Form of order sought

— Annul Commission Decision C(2009) 7492 final in Case COMP. 37 956 — Reinforcing bars, readoption — adopted by the Commission on 30 September 2009.

— In the alternative:

— Reduce the amount of the fine imposed.

— Order the defendant to pay all the costs of the proceedings.

#### Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-472/09 *SP v Commission*.

---

**Action brought on 8 December 2009 — Acciaierie e Ferriere Leali Luigi v Commission**

**(Case T-490/09)**

(2010/C 37/61)

*Language of the case: Italian*

#### Parties

*Applicant:* Acciaierie e Ferriere Leali Luigi SpA (Brescia, Italy) (represented by: G. Belotti, lawyer)

*Defendant:* European Commission

#### Form of order sought

— Annul Commission Decision C(2009) 7492 final in Case COMP. 37 956 — Reinforcing bars, readoption — adopted by the Commission on 30 September 2009.

— In the alternative:

— Annul Article 2 of the decision insofar as the applicant is ordered to pay the sum of EUR 6,093 million jointly and severally with the company Leali SpA.

— In the further alternative:

— Reduce the amount of the fine imposed.

— Order the defendant to pay the costs.

#### Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-472/09 *SP v Commission*.

---