

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

*Other party to the proceedings before the Board of Appeal:* Mascha & Regner Consulting KEG (Vienna, Austria)

#### **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 8 October 2009 in case R 239/2009-4; and

— Order the defendant to bear the costs.

#### **Pleas in law and main arguments**

*Registered Community trade mark subject of the request for revocation:* The word mark “CAFE CARLYLE”, for services in class 42

*Proprietor of the Community trade mark:* The applicant

*Party requesting the revocation of the Community trade mark:* The other party to the proceedings before the Board of Appeal

*Decision of the Cancellation Division:* Rejected the request for revocation

*Decision of the Board of Appeal:* Revoked the Community trade mark concerned

*Pleas in law:* Infringement of Article 51(1)(a) of Council Regulation 207/2009, as the Board of Appeal erroneously employed a too restrictive interpretation of the concept of genuine use. Moreover, the Board of Appeal failed: (i) to take into consideration properly the evidence of use submitted by the applicant before the Cancellation Division; (ii) to assess correctly the scope of the said evidence of use; and (iii) to make an overall assessment thereof.

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

*Other party to the proceedings before the Board of Appeal:* Mascha & Regner Consulting KEG (Vienna, Austria)

#### **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 8 October 2009 in case R 240/2009-4; and

— Order the defendant to bear the costs.

#### **Pleas in law and main arguments**

*Registered Community trade mark subject of the request for revocation:* The word mark ‘THE CARLYLE’, for goods and services in classes 3, 25 and 42

*Proprietor of the Community trade mark:* The applicant

*Party requesting the revocation of the Community trade mark:* The other party to the proceedings before the Board of Appeal

*Decision of the Cancellation Division:* Partially rejected the request for revocation

*Decision of the Board of Appeal:* Revoked the Community trade mark concerned

*Pleas in law:* Infringement of Article 51(1)(a) of Council Regulation 207/2009, as the Board of Appeal erroneously employed a too restrictive interpretation of the concept of genuine use. Moreover, the Board of Appeal failed: (i) to take into consideration properly the evidence of use submitted by the applicant before the Cancellation Division; (ii) to assess correctly the scope of the said evidence of use; and (iii) to make an overall assessment thereof.

---

**Action brought on 16 December 2009 — Carlyle v OHIM — Mascha & Regner Consulting (THE CARLYLE)**

**(Case T-506/09)**

(2010/C 51/71)

*Language in which the application was lodged:* English

#### **Parties**

*Applicant:* The Carlyle, LLC (St. Louis, United States) (represented by: E. Cornu, E. De Gryse and D. Moreau, lawyers)

---

**Action brought on 22 December 2009 — Baena Grupo v OHIM — Neuman and Galdeano del Sel (Designs)**

**(Case T-513/09)**

(2010/C 51/72)

*Language in which the application was lodged:* Spanish

#### **Parties**

*Applicant:* José Manuel Baena Grupo, SA (Santa Perpètua de Mogoda, Spain) (represented by: A. Canela Giménez, lawyer)