

*Decision of the Opposition Division:* rejection of the opposition

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

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 <sup>(1)</sup> as there is a likelihood of confusion between the marks at issue.

<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 28 September 2010 — HerkuPlast Kubern v OHIM — How (eco-pack)**

(Case T-445/10)

(2010/C 317/79)

*Language in which the application was lodged:* German

**Parties**

*Applicant:* HerkuPlast Kubern GmbH (Ering, Germany) (represented by: G. Württenberger and R. Kunze, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Heidi A.T. How (Harrow, United Kingdom)

**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 27 July 2010 in Case R 1014/2009-4;

— order the defendant to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Heidi A.T. How.

*Community trade mark concerned:* Figurative mark including the word element 'eco-pack', for goods in Class 16.

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

*Mark or sign cited in opposition:* German word mark and international registration 'ECOPAK' for goods in Class 20.

*Decision of the Opposition Division:* Opposition rejected.

*Decision of the Board of Appeal:* Appeal dismissed.

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 <sup>(1)</sup> as there is a likelihood of confusion between the marks at issue, and infringement of Articles 75 and 76 of Regulation (EC) No 207/2009 in so far as the Board of Appeal dismissed altogether the existence of any likelihood of confusion, its reasoning is, at various points, inherently contradictory and it inappropriately rejected as irrelevant arguments submitted by the applicant that are in fact relevant.

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

**Appeal brought on 24 September 2010 by Luigi Marcuccio against the order of the Civil Service Tribunal delivered on 9 July 2010 in Case F-91/09, Marcuccio v Commission**

(Case T-450/10 P)

(2010/C 317/80)

*Language of the case:* Italian

**Parties**

*Appellant:* Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

*Other party to the proceedings:* European Commission

**Form of order sought by the appellant**

— In any event, set aside in its entirety and without exception the order under appeal.

— Declare that the action at first instance, in relation to which the order under appeal was made, was perfectly admissible.

— Allow in its entirety and without any exception whatsoever the relief sought by the appellant at first instance.

— Order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation to both the proceedings at first instance and the present appeal proceedings.

— In the alternative, refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.