

*Mark or sign cited in opposition:* Benelux trade mark registration No 753 216 and International Trade mark registration No 872 478 of the word mark 'ARTITUDE' for goods in class 2

*Decision of the Opposition Division:* Upheld the opposition

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

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 207/2009.

**Action brought on 3 January 2013 — MasterCard International/OHIM — Nehra (surfpin)**

(Case T-13/13)

(2013/C 86/31)

*Language in which the application was lodged:* English

**Parties**

*Applicant:* MasterCard International, Inc. (New York, United States) (represented by: N. Bolter and C. Sawdy, solicitors)

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

*Other party to the proceedings before the Board of Appeal:* Sheetal Nehra (London, United Kingdom)

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision under Articles 8(1)(b), 8(4) and 8(5) CTMR;
- Uphold the applicant's opposition filed against the respondent's mark in its entirety;
- In the alternative, uphold the applicant's opposition in respect of such services for which it is found that a likelihood of confusion exists and/or for such services where it is determined there exists a risk of the application mark taking unfair advantage of, or being detrimental to, the distinctive character or repute of the applicant's mark; and
- Order the respondent to pay the cost of the applicant.

**Pleas in law and main arguments**

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

*Community trade mark concerned:* The figurative mark in blue, black and white containing the word element 'surfpin' and a device of three overlapping circles for services in classes 36 — Community trade mark application No 8 368 862

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

*Mark or sign cited in opposition:* Figurative marks in different colours containing a device of overlapping circles and some of them the word elements 'MasterCard Worldwide' or 'MasterCard' — Community trade mark registration No 5 198 585, Community trade mark registration No 5 198 494, UK trade mark registration No 2 425 471, UK trade mark registration No 2 429 669, Community trade mark registration No 5 646 261, Community trade mark registration No 761 221, Community trade mark registration No 5 646 492 and Community trade mark registration No 5 646 609 for goods and services in classes 3, 5, 6, 9, 12, 14, 16, 18, 20, 21, 24, 25, 27, 28, 35, 36, 38, 39, 41, 42, 43, 44 and 45

*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) and (4) and (5) of Council Regulation No 207/2009.

**Action brought on 3 January 2013 — Seal Trademarks/OHIM — Exel Composites (XCEL)**

(Case T-14/13)

(2013/C 86/32)

*Language in which the application was lodged:* English

**Parties**

*Applicant:* Seal Trademarks Pty Ltd (Queensland, Australia) (represented by: E. Armijo Chávarri, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Exel Composites Oyj (Mäntyharju, Finland)

**Form of order sought**

The applicant claims that the Court should:

- Annul the Second Board of Appeal's Decision of 11 October 2012 or;
- Subsidiarily, modify it, because it goes contrary to Articles 42, paragraphs 2 and 3, and 8, paragraph 1, letter b) of the CTMR (expressly sentencing OHIM to court fees).

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant