

*Decision of the Board of Appeal:* Appeal dismissed in part

*Pleas in law:* Incorrect application of Article 9(1)(b) of Regulation No 40/94 on the Community trade mark.

**Action brought on 30 January 2009 — El Corte Inglés v Commission**

(Case T-38/09)

(2009/C 69/113)

*Language of the case:* Spanish

**Parties**

*Applicant:* El Corte Inglés (Madrid, Spain) (represented by: P. Muñoz and M. Baz, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

- annul the contested decision;
- order the defendant to pay the costs of these proceedings.

**Pleas in law and main arguments**

This action is brought against Commission Decision C(2008) 6317 final of 3 November 2008 ordering the a posteriori recovery of import duties and finding that the remission of those duties was not justified in a particular case (REM File 03/07).

The applicant imported textiles from Jamaica, imports subject to the system of preferential treatment laid down in the EU-ACP Association Agreement provided that they are accompanied by a EUR. 1 movement of goods certificate, sent by the competent Jamaican authorities. The certificate was included as evidence that the goods originated in Jamaica. However, an OLAF investigation in Jamaica concluded that the goods did not acquire preferential origin status in Jamaica, so that they could not benefit from preferential treatment.

In response to the request for remission of the tax submitted by the applicant on the basis of Article 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, the contested decision declared that the Jamaican authorities had not committed an error of the kind provided for in Article 220(2)(b) of that regulation and that the applicant was not in a special situation as a result of the incorrect representation of the facts by the exporters.

The applicant claims that the contested decision is null and void for the following reasons:

- The administrative procedure for the adoption of the contested decision infringes essential procedural require-

ments. Specifically, the contested decision breaches the principle of sound administration and seriously infringes the applicant's rights of defence on the ground that no administrative file exists concerning the processing of the contested decision.

- The contested decision contains an error of assessment by concluding that the applicant is not in a special situation. In this case a special situation exists in so far as:
  - the Jamaican authorities knew or ought to have known that that the goods did not satisfy the conditions laid down for entitlement to the preferential treatment, even if the exporters had supplied incorrect information,
  - the Jamaican authorities committed a serious breach of their obligations.
- The defendant failed to fulfil its obligation to ensure the ACP-EC Agreement is properly applied.

**Action brought on 28 January 2009 — A. Loacker SpA v OHIM**

(Case T-42/09)

(2009/C 69/114)

*Language in which the application was lodged:* Italian

**Parties**

*Applicant:* A. Loacker SpA (Renon, Italy) (represented by: V. Bilardo, C. Bacchini, M. Mazzitelli, 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:* Editrice Quadratum SpA (Milan, Italy)

**Form of order sought**

- Annul the contested decision;
- Order OHIM to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Editrice Quadratum SpA.

*Community trade mark concerned:* Word mark 'Quadratum', registration application No 4653481, for goods in Class 30.

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

*Mark or sign cited in opposition:* Community word mark 'LOACKER QUADRATINI', for goods in Class 30.

*Decision of the Opposition Division:* Opposition upheld in part.

*Decision of the Board of Appeal:* Action brought by the trade mark applicant upheld.

*Pleas in law:* Infringement of Article 8(1)(b) and of Articles 73 and 74 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

**Action brought on 3 February 2009 — Cachuera v OHIM — Gelkaps (Ayanda)**

(Case T-43/09)

(2009/C 69/115)

*Language in which the application was lodged:* Spanish

**Parties**

*Applicant:* La Cachuera SA (Misiones, Argentina) (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 of OHIM:* Gelkaps GmbH (Pritzwalk, Germany).

**Form of order sought**

— Declare the action against the Decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 19 November 2008 lodged in time and in the required form and, via the appropriate procedure, order the annulment of that decision and order expressly that OHIM pay the costs.

**Pleas in law and main arguments**

Applicant for a Community trade mark: Gelkaps GmbH.

*Community trade mark concerned:* Word mark 'AYANDA' (Application No 3.315.405) for goods and services in Classes 3, 5, 28, 29, 30, 32 and 44.

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

Mark or sign cited in opposition: Spanish figurative and word marks 'AMANDA', for goods in Class 30.

*Decision of the Opposition Division:* Opposition upheld in part.

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

*Pleas in law:* Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark.

**Order of the Court of First Instance of 16 January 2009 — Italy v Commission**

(Case T-431/04) <sup>(1)</sup>

(2009/C 69/116)

*Language of the case:* Italian

The President of the Seventh Chamber has ordered that the case be removed from the register.

<sup>(1)</sup> OJ C 314, 18.12.2004.

**Order of the Court of First Instance of 15 January 2009 — Commission v Banca di Roma**

(Case T-261/07) <sup>(1)</sup>

(2009/C 69/117)

*Language of the case:* Italian

The President of the Fourth Chamber has ordered that the case be removed from the register.

<sup>(1)</sup> OJ C 211, 8.9.2007.

**Order of the Court of First Instance of 3 February 2009 — Comtec Translations v Commission**

(Case T-239/08) <sup>(1)</sup>

(2009/C 69/118)

*Language of the case:* English

The President of the Eighth Chamber has ordered that the case be removed from the register.

<sup>(1)</sup> OJ C 209, 15.8.2008.