

JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)

30 June 2009 \*

In Case T-435/05,

**Danjaq LLC**, established in Santa Monica, California (United States), represented by G. Hobbs QC, G. Hollingworth, Barrister, M.S. Skrein and L. Berg, Solicitors,

applicant,

v

**Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)**, represented by A. Folliard-Monguiral, acting as Agent,

defendant,

the other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance, being

\* Language of the case: English.

**Mission Productions Gesellschaft für Film-, Fernseh- und Veranstaltungsproduktion mbH**, established in Munich (Germany), represented by K. Lewinsky, lawyer,

ACTION brought against the decision of the First Board of Appeal of OHIM of 21 September 2005 (Case R 1118/2004-1) relating to opposition proceedings between Danjaq LLC and Mission Productions Gesellschaft für Film-, Fernseh- und Veranstaltungsproduktion mbH,

THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES (Second Chamber),

composed of I. Pelikánová, President, K. Jürimäe and S. Soldevila Frago (Rapporteur),  
Judges,

Registrar: N. Rosner, Administrator,

having regard to the application lodged at the Registry of the Court of First Instance on 5 December 2005,

having regard to the response of OHIM lodged at the Court Registry on 3 March 2006,

having regard to the reply lodged at the Court Registry on 12 July 2006,

having regard to the rejoinder of OHIM lodged at the Court Registry on 14 September 2006,

having regard to the pleading of the intervener lodged at the Court Registry on 13 October 2006,

having regard to the letters of 16, 23 and 24 October 2008 from the applicant, the intervener and OHIM, stating that they would not attend the hearing,

having regard to the change in the composition of the Chambers of the Court of First Instance,

gives the following

## **Judgment**

### **Background to the dispute**

- <sup>1</sup> On 13 June 2001, the intervener, Mission Productions Gesellschaft für Film-, Fernseh- und Veranstaltungsproduktion mbH, filed an application for registration of a Community trade mark at the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) pursuant to Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) (replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p.1)). The mark for which registration was sought is the word sign Dr. No.

- 2 The goods for which registration was sought are in Classes 9, 12, 18, 25 and 32 of the Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks of 15 June 1957, as revised and amended, and correspond, in respect of each of those classes, to the following description:
- ‘Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; electric and/or electronic apparatus and instruments (included in class 9); apparatus for recording, transmission or reproduction of sound and/or images and/or electronic data; magnetic data-carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus; data carriers of all types containing programs, software programs, recorded sound carriers, recorded image and sound carriers’, in Class 9;
  
  - ‘Vehicles; apparatus for locomotion by land, air or water’, in Class 12;
  
  - ‘Leather and imitations of leather, and goods made of these materials (included in class 18); animal skins; trunks and travelling bags; luggage; umbrellas, parasols and walking sticks; whips, harness and saddlery’, in Class 18;
  
  - ‘Clothing, footwear, headgear’, in Class 25;

— ‘Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages’, in Class 32.

3 On 26 April 2002, the applicant, Danjaq LLC, gave notice of opposition to registration of the trade mark applied for, claiming, first, that there was a likelihood of confusion with the earlier well-known marks Dr. No and Dr. NO, for the purposes of Article 8(1)(b) and (2)(c) of Regulation No 40/94 (now Article 8(1)(b) and (2)(c) of Regulation No 207/2009), and relying, second, on the basis of Article 8(4) of Regulation No 40/94 (now Article 8(4) of Regulation No 207/2009), on the non-registered earlier marks, and the earlier signs, Dr. No and Dr. NO, used in the course of trade to designate films, DVDs, videos, comic books, music recordings, books, posters and action figures.

4 By decision of 28 September 2004, OHIM rejected the opposition, holding that the applicant had not proved that the marks in question had a well-known character or that the non-registered marks or the signs other than trade marks had previously been used in the course of trade.

5 On 29 November 2004, the applicant filed a notice of appeal against the Opposition Division’s decision, and by decision of 21 September 2005 the Board of Appeal dismissed that appeal, confirming OHIM’s arguments (‘the contested decision’).

**Forms of order sought by the parties**

6 The applicant claims that the Court should:

- annul the contested decision;
  
- allow the opposition to the Community trade mark application;
  
- in the alternative, remit the opposition to OHIM for further consideration in accordance with the judgment of the Court;
  
- award the applicant its costs of the proceedings.

7 OHIM contends that the Court should:

- dismiss the applicant's claims for annulment of the contested decision;

— order the applicant to pay the costs.

8 The intervener contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

## **Law**

### *Admissibility of the evidence provided at the stage of the reply*

#### Arguments of the parties

9 At the stage of the reply, the applicant produced a document attesting to the existence of a website inferring a connection between the trade mark applied for by the intervener

and James Bond imagery, in addition to a letter in which the intervener asserts that that website was not registered by it and is not connected to it. The applicant states that it produced those documents at that stage of the written procedure because it was unaware of the existence of that website beforehand.

- 10 OHIM argues that that evidence is inadmissible and that the fact that the website was discovered by the applicant only recently does not affect that conclusion.

### Findings of the Court

- 11 Since the purpose of the present action is to review the legality of the decision of the Board of Appeal, in accordance with Article 63 of Regulation No 40/94 (now Article 65 of Regulation No 207/2009), the review by the Court cannot go beyond the factual and legal context of the dispute as it was brought before that board. It is therefore not the Court's function to re-evaluate the factual circumstances in the light of evidence adduced for the first time before it. To admit such evidence is contrary to Article 135(4) of the Rules of Procedure of the Court of First Instance, which prohibits the parties from changing the subject-matter of the proceedings before the Board of Appeal. In the present case, the conditions of use of the mark applied for were not the subject of the opposition proceedings before OHIM and cannot therefore be pleaded before the Court (see, to that effect, Case T-128/01 *DaimlerChrysler v OHIM (Grille)* [2003] ECR II-701, paragraph 18, and Case T-115/03 *Samar v OHIM — Grotto (GAS STATION)* [2004] ECR II-2939, paragraph 13).

- 12 In addition, the applicant cannot rely on Article 48(1) and (2) of the Rules of Procedure to justify the late submission of those documents. The fact that the applicant did not

discover the website until after it had lodged its application is not sufficient to justify adducing fresh evidence at the stage of the reply (see, to that effect, *GAS STATION*, paragraph 15). Accordingly, those documents must be declared inadmissible.

*Admissibility of some of OHIM's arguments*

Arguments of the parties

<sup>13</sup> The applicant submits that OHIM's arguments, in its response, relating to whether the signs Dr. No and Dr. NO are well known, and to whether it is appropriate to draw a distinction between the artistic and the commercial origin of the film and between a dramatic work and its medium, seek to replace the grounds on which the contested decision is based and are therefore inadmissible.

<sup>14</sup> OHIM contends that it merely expanded on the reasoning of the Board of Appeal and thus has not raised any new matters.

## Findings of the Court

- 15 Under Article 135(4) of the Rules of Procedure, both OHIM and the other parties to the proceedings are prohibited from changing the subject-matter of the proceedings as brought before the Board of Appeal.
- 16 However, contrary to the applicant's claim, OHIM's arguments do not seek to change either the subject-matter of the proceedings or the basis of the Board of Appeal's decision. OHIM has merely expanded on the arguments set out by the Board of Appeal in relation to the popularity of the film *Dr. No*, to the fact that the applicant trades in media containing that film (paragraph 21 of the contested decision), and also to the possible use of the signs Dr. No and Dr. NO as indicators of commercial origin (paragraphs 18, 19, and 22 to 30 of the contested decision), in order to strengthen its position. Accordingly, OHIM has not changed the subject-matter of the proceedings by those arguments, which are therefore admissible.

*Substance*

- 17 In support of its action, the applicant relies on three pleas in law. The first plea alleges infringement of Article 8(1)(a) and (b) and (2)(c) of Regulation No 40/94 (Article 8(1)(a) now Article 8(1)(a) of Regulation No 207/2009). The second plea alleges infringement of Article 73 of Regulation No 40/94 (now Article 75 of Regulation No 207/2009), and of Rules 50(2)(f) and 52(1) of Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Regulation No 40/94 (OJ 1995 L 303, p. 1). The third plea alleges infringement of Article 8(4) of Regulation No 40/94.

*The first plea in law, alleging infringement of Article 8(1)(a) and (b) and (2)(c) of Regulation No 40/94*

Arguments of the parties

18 First, the applicant submits that the signs Dr. No and Dr. NO are well-known marks and that, in order to establish that they are well known, there is nothing in the wording of Regulation No 40/94 or the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised and amended ('the Paris Convention'), which makes it necessary to prove their use in the Community prior to the date of application for registration of the Community trade mark. By contrast, it submits that the assessment of whether the marks are well known should focus on the degree of knowledge of the marks among the public, and proof of use is therefore an additional, optional factor.

19 Second, relying on case-law, the applicant submits that the Board of Appeal misinterpreted the concept of 'use as a trade mark', since the applicant had used the signs referred to in order to identify its goods and the other goods distributed and marketed with its agreement.

20 Third, the applicant submits that there is a likelihood of confusion between the marks at issue, since the trade mark applied for is identical to the well-known marks of which the applicant is the proprietor, and the goods for which the trade mark has been applied for are identical with, or similar to, those designated by the well-known marks. That impression is supported by the existence of a website which suggests a connection between the trade mark applied for by the intervener and James Bond imagery.

21 OHIM and the intervener contend that those arguments should be rejected.

## Findings of the Court

- 22 The examination of this plea raises three distinct legal questions. The first is whether the signs Dr. No and Dr. NO were used by the applicant as trade marks prior to the date of application for registration of the Community trade mark. The second is whether the signs Dr. No and Dr. NO are well known in a Member State within the meaning of Article 6 bis of the Paris Convention and Article 8(2)(c) of Regulation No 40/94. Lastly, the third question is whether there is a likelihood of confusion between the trade mark applied for and the signs Dr. No and Dr. NO for the purposes of Article 8(1)(a) and (b) of Regulation No 40/94.
- 23 As regards the first question, first of all, it is settled case-law that the essential function of a trade mark is to identify the commercial origin of goods or services, thus enabling the consumer who purchases them to repeat the experience if it proves to be positive, or to avoid it if it proves to be negative, on the occasion of a subsequent acquisition (Case T-360/00 *Dart Industries v OHIM (UltraPlus)* [2002] ECR II-3867, paragraph 42, and Case T-242/02 *Sunrider v OHIM (TOP)* [2005] ECR II-2793, paragraph 88).
- 24 Next, it should be pointed out that Dr. No is the title of the first film in the ‘James Bond’ series and also the name of one of the main characters in the film. Theoretically, those facts cannot prevent the use of the signs Dr. No and Dr. NO as trade marks in order to identify the commercial origin of the films or DVDs.
- 25 However, in the present case, an examination of the documents submitted by the applicant shows that the signs Dr. No and Dr. NO do not indicate the commercial origin of the films, but rather their artistic origin. For the average consumer, the signs in question, affixed to the covers of the video cassettes or to the DVDs, help to distinguish that film from other films in the ‘James Bond’ series. The commercial origin of the film is

indicated by other signs, such as ‘007’ or ‘James Bond’, which are affixed to the covers of the video cassettes or to the DVDs, and which show that its commercial origin is the company producing the films in the ‘James Bond’ series. Moreover, even if the profits that the film *Dr. No* had generated within the Community are capable of showing the commercial success of the film in that territory, the fact remains that they cannot show that the signs in question are used as indicators of commercial origin.

26 In addition, contrary to the applicant’s claim, the distinction between title and trade mark is not ‘unrealistic and artificial’. The same sign may be protected as an original creative work by copyright and as an indicator of commercial origin by trade mark law. It is therefore a matter of different exclusive rights based on distinct qualities, that is to say the original nature of a creation, on the one hand, and the ability of a sign to distinguish the commercial origin of the goods and services, on the other (judgment of 21 October 2008 in Case T-73/06 *Cassegrain v OHIM (Shape of a bag)*, not published in the ECR, paragraph 32). Therefore, even if the title of a film can be protected pursuant to certain national laws as an artistic creation independent of the film itself, it cannot automatically enjoy the protection afforded to indicators of commercial origin, since only signs which develop characteristic trade mark functions may enjoy that protection.

27 In the case of comic books, music recordings, books and posters, the signs Dr. No and Dr. NO are likewise not used as trade marks, but as a reference which is descriptive of the goods, indicating to consumers that they are music from the film *Dr. No*, a book or a comic book about the character of ‘Dr. No’, or a poster of that film or character. As is apparent from examining the documentation supplied by the applicant, some of the goods referred to are marketed to the public under other indicators of origin, namely ‘007’ and ‘James Bond’, which indicate to consumers that the commercial origin of the abovementioned goods relating to the film or the character of ‘Dr. No’ is the same as that of the films in the ‘James Bond’ series.

28 The same conclusion applies in the case of model cars or watches produced by the companies with a licence to use the signs Dr. No and Dr. NO on those goods. In both

cases, the use of those signs is merely descriptive, indicating to consumers that the car in question is a model of the one used in the film *Dr. No*, or that the watch is the one for the film *Dr. No* in a collection of watches produced to commemorate the fortieth anniversary of the films in the 'James Bond' series. In addition, an examination of the documentation relating to the cars shows that the indicators of commercial origin used for them by the applicant are 'James Bond', '007' and the 'Gun Symbol'. As in the cases analysed in paragraph 27 above, those indicators show that the commercial origin of the goods is the same as that of the other 'Bond' goods.

29 Even assuming that the signs Dr. No and Dr. NO were used as indicators of commercial origin on the action figures of characters from the films, produced by a company with a licence over those trade marks, in particular through the use of the signs in question together with the "™" symbol, the applicant has failed to establish that the signs Dr. No and Dr. NO were used as trade marks prior to the date of application for registration of the Community trade mark. An examination of the documentation submitted shows that the 'Dr. No' action figures were placed on the market only from August or September 2002, that is to say after the Community trade mark application was filed on 13 June 2001.

30 Lastly, the judgments of the Court of Justice in Case C-63/97 *BMW* [1999] ECR I-905, paragraph 38, and Case C-206/01 *Arsenal Football Club* [2002] ECR I-10273, paragraph 53, which the applicant relies on in connection with the use of the signs as trade marks, are not applicable to the present case. What is at issue is not the use of a registered trade mark in the course of trade for a wholly descriptive purpose or for purposes other than that of distinguishing goods or services in the market. On the contrary, the issue is whether the signs in question, which correspond to the title of a film, were used as trade marks prior to the date of application for registration of the Community trade mark, which has not been shown by the applicant.

31 Since it has not been established that the signs Dr. No and Dr. NO were used as indicators of commercial origin before the Community trade mark application was

filed, they cannot be regarded as well-known trade marks within the meaning of Article 8(2)(c) of Regulation No 40/94 and Article 6 bis of the Paris Convention, and it is not necessary to examine whether the signs in question are well known within a Member State within the meaning of that latter provision. Since the signs that have been referred to are not earlier trade marks within the meaning of Article 8(2)(c) of Regulation No 40/94, it is not therefore necessary to examine whether there is a likelihood of confusion between the signs in question. Accordingly, the first plea in law must be rejected.

*The second plea in law, alleging infringement of Article 73 of Regulation No 40/94 and of Rules 50(2)(f) and 52(1) of Regulation No 2868/95*

#### Arguments of the parties

<sup>32</sup> The applicant submits that inadequate grounds were given in the contested decision for rejecting the plea alleging infringement of Article 8(4) of Regulation No 40/94, and that lack of evidence of the use of the signs does not warrant the Board of Appeal's failure to answer the questions raised.

<sup>33</sup> OHIM contends that the plea should be rejected.

#### Findings of the Court

<sup>34</sup> It is settled case-law that the statement of reasons required under Article 73 of Regulation No 40/94 must show in a clear and unequivocal manner the reasoning of the

author of the act. That duty has two purposes: to allow interested parties to know the justification for the measure so as to enable them to protect their rights, and to enable the Community judicature to exercise its power to review the legality of the decision (Case T-16/02 *Audi v OHIM (TDI)* [2003] ECR II-5167, paragraphs 87 and 88, and Case T-304/06 *Reber v OHIM — Chokoladefabriken Lindt & Sprüngli (Mozart)* [2008] ECR II-1927, paragraph 43).

35 Under Article 8(4) of Regulation No 40/94, the existence of an earlier non-registered trade mark or a sign other than a trade mark gives good grounds for opposition if the sign satisfies the following conditions: it is used in the course of trade; it is of more than mere local significance; it confers on its proprietor the right to prohibit the use of a subsequent trade mark; rights to the sign in question were acquired, pursuant to the law of the Member State in which the sign was used, prior to the date of application for registration of the Community trade mark (judgments of 12 June 2007 in Joined Cases T-53/04 to T-56/04, T-58/04 and T-59/04 *Budějovický Budvar v OHIM — Anheuser-Busch (BUDWEISER)*, not published in the ECR, paragraph 71; Joined Cases T-60/04 to T-64/04 *Budějovický Budvar v OHIM — Anheuser-Busch (BUD)*, not published in the ECR, paragraph 69; and Joined Cases T-57/04 and T-71/04 *Budějovický Budvar v OHIM — Anheuser-Busch (BUDWEISER)* [2007] ECR II-1829, paragraph 86). Those conditions are cumulative. Thus, where a sign does not satisfy one of those conditions, the opposition based on the existence of a non-registered trade mark or of other signs used in the course of trade within the meaning of Article 8(4) of Regulation No 40/94 cannot succeed.

36 In the present case, the arguments put forward by the Board of Appeal in paragraphs 29 and 30 of the contested decision show that the applicant had not established that it had used the signs Dr. No and Dr. NO in the course of trade, which is a sufficient ground on which to reject the plea.

37 As OHIM states, the fact that the Board of Appeal's arguments on the point are brief does not mean that the decision does not contain adequate reasons. Those arguments did allow the applicant to know the justification for the decision taken so as to enable it

to protect its rights, and also enable the Court to exercise its power to review the legality of the contested decision (*Mozart*, paragraph 47). Accordingly, the second plea in law must be rejected.

*The third plea in law, alleging infringement of Article 8(4) of Regulation No 40/94*

### Arguments of the parties

38 The applicant submits that Article 8(4) of Regulation No 40/94 does not refer to use in the course of trade as a precondition for the protection of the signs referred to in that article and that the Board of Appeal should have taken into account the provisions of national law put forward which prevent the appropriation of such signs by third parties. It also states that the sign is not of mere local significance.

39 OHIM contends that the argument should be rejected.

### Findings of the Court

40 As has already been observed in paragraphs 24 to 29 of this judgment, the use of the sign Dr. No on the cover of video cassettes, DVDs, music recordings, books, comic books, posters, model cars and watches does not constitute use as a trade mark. Consequently, the signs Dr. No and Dr. NO cannot be regarded as non-registered trade marks. In addition, in the case of the action figures from the films, the applicant has not shown that it had used them before the Community trade mark application was filed.

Accordingly, an opposition based on the existence of a non-registered trade mark prior to the Community trade mark application cannot succeed.

41 In addition, it is clear from Article 8(4) read in conjunction with Article 52(2) of Regulation No 40/94 (now Article 53(2) of Regulation No 207/2009) that the protection provided for by copyright cannot be relied on in opposition proceedings, but only in proceedings for a declaration of invalidity of the Community mark in question.

42 As regards the applicant's argument that the signs Dr. No and Dr. NO are protected, as distinctive titles of a film, under Article 8(4) of Regulation No 40/94, it should be pointed out that the titles of artistic works are protected by certain national laws against the use of a subsequent mark, as distinctive signs outside the area of copyright. In those cases, the titles of artistic works may be regarded as signs other than trade marks, for the purposes of Article 8(4) of Regulation No 40/94.

43 In accordance with the Guidelines relating to proceedings before OHIM (Part C, entitled 'Opposition') on which the applicant seeks to rely, among the various national laws referred to, the Markengesetz (the German Law on trade marks) affords such protection against a subsequent trade mark which gives rise to a likelihood of confusion with the titles in question, provided that such titles have distinctive character and are used in the course of trade. Similar protection is afforded by Swedish law to the distinctive titles of literary and artistic creations. However, contrary to the applicant's claims, and in accordance with the above guidelines, which it adduces as evidence of the national laws, Greek law affords similar protection only to the titles of periodicals, and Spanish, French, Italian and Netherlands law do not afford the titles of artistic works any protection different from, and independent of, copyright. In addition, it is not apparent from either those guidelines or the remainder of the documentation submitted in what circumstances the law of passing off in the United Kingdom would

afford the signs *Dr. No* and *Dr. NO* protection different from that provided by copyright. Accordingly, those laws cannot be relied on in the context of opposition proceedings.

44 Under Article 8(4) of Regulation No 40/94, the existence of a sign other than a trade mark gives good grounds for opposition to the registration of a Community trade mark, if that sign satisfies all four conditions referred to in paragraph 35 of this judgment. Under that article, the condition requiring use in the course of trade is a fundamental requirement, without which the sign in question cannot enjoy any protection against the registration of a Community trade mark, irrespective of the requirements to be met under national law in order to acquire exclusive rights. In the specific case of the titles of works, the use of the title presupposes that the work in question has been placed on the relevant market, that is to say in this case in Germany and Sweden, territories in which film titles are protected as signs other than by copyright.

45 The applicant states that since 1962 the film *Dr. No* has been broadcast regularly in the territory of the European Union, and that it has even prepared a new series of videos and DVDs. It also states that the total amount of profits obtained in the European Union is in excess of USD 26 million. However, the documents submitted by the applicant are not sufficient to establish that the title of that film was used in the course of trade in the territories in which it is protected, before the Community trade mark application was filed. First, the applicant has failed to specify the extent of use of the title in the markets concerned, which could have been done without too much difficulty, for example by providing programming details of the film, either for cinemas or television, or to specify the length of time over which the film was distributed. On the contrary, the applicant merely submitted an extract from a page of a website in which it is mentioned that the film *Dr. No* was broadcast in the United Kingdom on 2 June 1999. Second, the statement of the chief operating officer of the applicant and the statements of an expert designated by it are evidence from individuals who are not independent from it and which cannot therefore constitute sufficient evidence to substantiate the use of the title (to that effect, Case T-303/03 *Lidl Stiftung v OHIM — REWE-Zentral (Salvita)* [2005] ECR II-1917, paragraphs 42 to 45). Third, the information published on another website as regards turnover is also insufficient since it is too general a reference to the activities carried on by the applicant outside the United States and does not specify either the type of activity or the territories concerned. For the same reason, the figures from a periodical, relating to the box office receipts generated by the film, have no bearing on the use of the sign. Fourth, and lastly, the remaining press articles furnished

by the applicant concern subjects which cannot corroborate the use of the sign in the Member States indicated.

- <sup>46</sup> Since the applicant has failed to establish the use of the title of the film *Dr. No* in the Member States in which it is protected against the use of a subsequent trade mark, it is not necessary to examine whether that title fulfils the remaining conditions in order to enjoy the protection afforded to those signs by national laws. Consequently, the third plea must be rejected and, accordingly, the action must be dismissed in its entirety.

### **Costs**

- <sup>47</sup> Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs in accordance with the forms of order sought by OHIM and the intervener.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

**1. Dismisses the action;**

**2. Orders Danjaq LLC to pay the costs.**

Pelikánová

Jürimäe

Soldevila Fragoso

Delivered in open court in Luxembourg on 30 June 2009.

[Signatures]