

*Decision of the Board of Appeal: Appeal dismissed*

*Pleas in law:* Infringement of Article 7(1)(b) and (c) of Council Regulation No 40/94 <sup>(1)</sup> in that, according to the applicant and contrary to the findings in the contested decision, the term 'PAYWEB CARD' is not descriptive but, on the contrary, distinctive in relation to the goods and services designated.

<sup>(1)</sup> Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

**Action brought on 8 November 2007 — CMB and Christof v Commission and EAR**

(Case T-407/07)

(2008/C 8/39)

*Language of the case: English*

**Parties**

*Applicants:* CMB Maschinenbau & Handels GmbH (Gratkorn, Austria) and J. Christof GmbH (Graz, Austria) (represented by: A. Petsche, N. Niejahr and Q. Azau, lawyers, and F. Young, Solicitor)

*Defendants:* Commission of the European Communities and European Agency for Reconstruction

**Form of order sought**

- Annul the decision;
- order the EAR to produce certain documents;
- order the EAR to pay damages in respect of the loss suffered by the applicants in the amounts of EUR 26 862,17 and EUR 3 197 968,80 for costs and lost profit, plus compensatory interest from the date on which the damage materialised;
- order the EAR to pay interest on the damages from the date of judgment;
- order the EAR and the Commission to pay their own costs and the applicants' costs in connection with these proceedings.

**Pleas in law and main arguments**

The applicants contest the European Agency for Reconstruction's decision of 29 August 2007 confirming the rejection of the applicants' bid and the award of the contract to another tenderer relating to the tender notice EuropeAid/124192/D/SUP/YU (OJ 2006/S 233-248823) for the supply, delivery, installation, after-sales service and training in the use of supplies for treatment and transport of medical waste throughout the Republic of Serbia (excluding Kosovo). The applicants further request compensation for the alleged damages caused by the decision.

In support of their application, the applicants submit that the contracting authority violated the award criteria for the tender, as the offer of the successful tenderer did not meet the technical specifications.

Furthermore, the applicants allege that the contracting authority violated the applicable procurement procedure, that it did not state reasons and that it breached the principle of sound administration.

**Action brought on 7 November 2007 — Crunch Fitness International v OHIM — ILG (CRUNCH)**

(Case T-408/07)

(2008/C 8/40)

*Language of the case: English*

**Parties**

*Applicant:* Crunch Fitness International Inc. (New York, United States) (represented by: J. Barry, Solicitor)

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

*Other party to the proceedings before the Board of Appeal:* ILG Ltd (Dun Laoghaire, Ireland)

**Form of order sought**

- The decision of the Fourth Board of Appeal in relation to class 41 of the CTM be annulled;
- the CTM remain registered for services in class 41; and
- order that OHIM pay its costs both in these proceedings and in the appeal proceedings before OHIM.

**Pleas in law and main arguments**

*Registered Community trade mark subject of the application for a declaration of invalidity:* The figurative mark 'CRUNCH' for goods and services in classes 9, 25 and 41 — Community trade mark No 62 083

*Proprietor of the Community trade mark:* The applicant

*Party requesting the declaration of invalidity of the Community trade mark:* ILG Ltd

*Decision of the Cancellation Division:* Partial declaration of invalidity of the Community trade mark for the goods and services in classes 9 and 25

*Decision of the Board of Appeal:* Declaration of invalidity of the Community trade mark also for the services in class 41

*Pleas in law:* Infringement of Article 50(1)(a), alternatively Article 50(2), of Council Regulation No 40/94, as the Board of Appeal erred in finding that there was no genuine use of the trade mark in question in the Community in connection with the services in class 41.

*Proprietor of the Community trade mark:* José Izquierdo Faces

*Party requesting the declaration of invalidity of the Community trade mark:* The applicant

*Trade mark right of the party requesting the declaration of invalidity:* The national word mark 'COPAT' for goods and services in classes 9, 35, 41 and 42

*Decision of the Cancellation Division:* Declaration of invalidity of the Community trade mark

*Decision of the Board of Appeal:* Annulment of the Cancellation Division's decision and dismissal of the request for a declaration of invalidity

*Pleas in law:* Infringement of Article 56(2) and (3) of Council Regulation No 40/94 and Rules 22(2) and 40(5) of Commission Regulation No 2868/95, as the Board of Appeal incorrectly found that the national trade mark had not been used in Germany during the period 1996 to 2001.

**Action brought on 16 November 2007 — Cohausz v OHIM — Izquierdo Faces (acopat)**

(Case T-409/07)

(2008/C 8/41)

*Language of the case:* English

**Parties**

*Applicant:* Prof. Dr.-Ing. Helge B. Cohausz (Düsseldorf, Germany) (represented by: I. Friedhoff, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* José Izquierdo Faces (Bilbao, Spain)

**Form of order sought**

— Annul the contested action [decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 September 2007 in Case R 289/2006-1];

— order intervener and/or [OHIM] to pay the costs.

**Pleas in law and main arguments**

*Registered Community trade mark subject of the application for a declaration of invalidity:* The figurative mark 'acopat' for services in classes 35 and 42 — Community trade mark No 1 643 782

**Action brought on 16 November 2007 — Jurado Hermanos, S.L. v OHIM (JURADO)**

(Case T-410/07)

(2008/C 8/42)

*Language of the case:* Spanish

**Parties**

*Applicant:* Jurado Hermanos, S.L. (Alicante, Spain) (represented by C. Martín Álvarez, lawyer)

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

**Form of order sought**

— Annul the decision of the Second Board of Appeal of 3 September 2007 in Case R 866/2007-2;

— Give judgment on the merits of the case, recognising JURADO HERMANOS, S.L., as an interested party in the renewal procedure for Community trade mark No 240.218, JURADO HERMANOS, S.L. being the exclusive and registered licensee of that mark, and acceding to the application for *restitutio in integrum* filed by JURADO HERMANOS, S.L. in relation to the renewal of the Community trade mark No 240.218, and

— Order OHIM to pay the costs.