

Appeal brought on 22 January 2008 by Sunplus Technology Co. Ltd against the judgment of the Court of First Instance (Fifth Chamber) delivered on 15 November 2007 in Case T-38/04: Sunplus Technology Co. Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-21/08 P)

(2008/C 64/44)

Language of the case: English

Parties

Appellant: Sunplus Technology Co. Ltd (represented by: H. Eichmann, G. Barth, U. Blumenröder, C. Niklas-Falter, M. Kinkeldey, K. Brandt, A. Franke, U. Stephani, B. Allekotte, K. Lochner, B. Ertle, C. Neuhierl, S. Prückner, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Sun Microsystems, Inc.

Form of order sought

The appellant claims that the Court should:

- annul the judgment under appeal;
- annul the contested decision;
- order OHIM to bear costs of the proceeding.

Pleas in law and main arguments

The appellant submits that the Court of First Instance erred in its application and interpretation of Article 8(1)(b) of Regulation No 40/94 ⁽¹⁾ by comparing single parts of the two trademarks and not assessing their overall impression on the consumer.

According to the appellant the Court of First Instance distorted facts and evidence when it stated that the device part of the trademark applied for contains a stylized sun rather than a 'star' symbol and when it omitted to take the letter 'S' into account when comparing the overall impression of the trademarks.

The appellant also maintains that the reasoning of the Court of First Instance is contradictory in that, at paragraph 39 of the judgment, it states that the additional components create differences between the trademarks but fails to consider those components when comparing the trademarks phonetically.

Finally the appellant submits that the Court of First Instance erred in not taking into account the category of goods and services in question and the circumstances in which they are marketed when assessing the likelihood of confusion.

⁽¹⁾ Council Regulation (EC) of 20 December 1993 on the Community trade mark (JO L 11, p. 1).

Order of the President of the Fourth Chamber of the Court of 20 November 2007 (reference for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — Metro International GmbH v Hauptzollamt Düsseldorf

(Case C-245/05) ⁽¹⁾

(2008/C 64/45)

Language of the case: German

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

⁽¹⁾ OJ C 205, 20.8.2005.

Order of the President of the Court of 21 November 2007 (reference for a preliminary ruling from the Raad van State — Netherlands) — Minister voor Vreemdelingenzaken en Integratie v I. Günes

(Case C-296/05) ⁽¹⁾

(2008/C 64/46)

Language of the case: Dutch

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

⁽¹⁾ OJ C 296, 26.11.2005.