

**Order of the Court (Seventh Chamber) of 15 January 2010 —
Messer Group v Air Products and Chemicals**

(Case C-579/08 P)

(Appeal — Article 119 of the Rules of Procedure — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Word marks Ferromix, Inomix and Alumix — Earlier word marks FERROMAXX, INOMAXX and ALUMAXX — Opposition by the proprietor of the trade mark — Relevant public — Degree of similarity — Limited distinctive character of the earlier mark — Likelihood of confusion)

1. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark (Council Regulation No 40/94, Art. 8(1)(b)) (see para. 51)*
2. *Appeals — Grounds — Mistaken assessment of the facts — Inadmissibility — Review by the Court of Justice of the assessment of the evidence — Possible only where the clear sense of the evidence has been distorted (Art. 225 EC; Statute of the Court of Justice, Art. 58, first para.) (see para. 54)*
3. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Similarity of the marks concerned — Criteria for assessment (Council Regulation No 40/94, Art. 8(1)(b)) (see paras 71-73)*

Re:

Appeal brought against the judgment of the Court of First Instance (First Chamber) of 15 October 2008 in Joined Cases T-305/06 to 307/06 *Air Products and Chemicals v OHIM*, by which the Court annulled the decisions of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 12 September 2006 dismissing the appeals brought by the proprietor of the Community word marks