

Pleas in law: Violation of Article 8(1)(b) and 8(5) of Council Regulation No 40/94, as the conflicting trade marks have a high degree of visual similarity because of an identical arrangement of nine elements present in both the trade mark applied for and in most of the earlier marks, which are inherently distinctive.

Pleas in law: Infringement of Articles 4 and 7(1)(e) of Regulation (EC) No 40/94 on the Community trade mark, as well as misconstruction of a number of provisions of Directive 89/104/EEC to approximate the laws of the Member States relating to trade marks. It is asserted, in that regard, that both Article 2 of Directive 89/104/EEC and Article 4 of Regulation (EC) No 40/94 acknowledge, expressly and unambiguously, the intrinsic distinctiveness, not only of the packaging of goods, but also of the very shape of those goods.

**Action brought on 2 January 2008 — Piccoli v OHIM
(Representation of a shell)**

(Case T-8/08)

(2008/C 64/91)

Language of the case: Italian

Parties

Applicant: G.M. Piccoli Srl (Alzano Lombardo, Italy) (represented by S. Giudici, lawyer)

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

Form of order sought

The applicant claims that the Court should:

- Annul or vary the decision of the First Board of Appeal of 28 September 2007, notified on 23 October 2007, to allow the registration of Community three-dimensional trade mark No 4522892 consisting in the stylised shape of a (scallop) shell, also to distinguish ‘brioches, brioches filled with creams or custards, jams, chocolate or honey’;
- Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Three-dimensional mark representing a shell from four different perspectives (Registration Application No 4.522.892 for goods in Class 30).

Decision of the Examiner: Rejection of the application for registration in respect of ‘preparations made from cereals, pastry, confectionery and ices’.

Decision of the Board of Appeal: Appeal dismissed.

**Action brought on 7 January 2008 — Volkswagen v OHIM
(CAR SILHOUETTE III)**

(Case T-9/08)

(2008/C 64/92)

Language in which the application was lodged: German

Parties

Applicant: Volkswagen AG (Wolfsburg, Germany) (represented by H.-P. Schrammek, C. Drzymalla, S. Risthaus, R. Jepsen, lawyers)

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

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 November 2007, notified on 9 November 2007, in appeal case R 1306/2007-4;
- Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: The international figurative mark ‘CAR SILHOUETTE III’ for goods in Class 12 (international registration, designating the European Community, No W 878 349).

Decision of the Examiner: Refusal of protection.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law:

- Infringement of Article 74(1) of Regulation (EC) No 40/94 ⁽¹⁾ due to an incorrect examination of the facts by the Office of its own motion;
- Infringement of Article 73 of Regulation No 40/94, namely the right to a fair hearing;
- Infringement of Article 7(1)(b) of Regulation No 40/94 in finding the mark to be devoid of any distinctive character.

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

Action brought on 7 January 2008 — Kwang Yang Motor v OHIM — Honda Giken Kogyo (Representation of an internal-combustion engine)

(Case T-10/08)

(2008/C 64/93)

Language in which the application was lodged: English

Parties

Applicant: Kwang Yang Motor Co. Ltd (Kaohsiung City, Taiwan) (represented by: P. Rath and W. Festl-Wietek, lawyers)

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

Other party to the proceedings before the Board of Appeal: Honda Giken Kogyo Kabushiki Kaisha Co. Ltd (Tokyo, Japan)

Form of order sought

- Annulment of the decision of the Third Board of Appeal of the OHIM of 8 October 2007 served to the representatives of the applicant on 30 October 2007, in Case R 1337/2006-3;
- order the OHIM to pay the costs of the proceedings before the Court and Board of Appeal.

Pleas in law and main arguments

Registered Community design subject of the application for a declaration of invalidity: Registered Community design for an 'internal-

combustion engine' — Community Design No 000 163 290 — 0001

Proprietor of the Community design: The applicant

Party requesting the declaration of invalidity of the Community design: Honda Giken Kogyo Kabushiki Kaisha Co. Ltd

Design of the party requesting the declaration of invalidity: Registered US design in respect for an 'internal-combustion engine' — Patent No D 367 070

Decision of the Invalidity Division: Rejected the application for invalidity in its entirety

Decision of the Board of Appeal: Annulled the decision of the Invalidity Division and declared the design invalid

Pleas in law: Infringement of Articles 4 and 6 of Council Regulation (EC) No 6/2002 on Community Designs.

Action brought on 7 January 2008 — Kwang Yang Motor v OHIM — Honda Giken Kogyo (Representation of an internal-combustion engine)

(Case T-11/08)

(2008/C 64/94)

Language in which the application was lodged: English

Parties

Applicant: Kwang Yang Motor Co. Ltd (Kaohsiung City, Taiwan) (represented by: P. Rath and W. Festl-Wietek, lawyers)

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

Other party to the proceedings before the Board of Appeal: Honda Giken Kogyo Kabushiki Kaisha Co. Ltd (Tokyo, Japan)

Form of order sought

- Annulment of the decision of the Third Board of Appeal of the OHIM of 8 October 2007 served to the representatives of the applicant on 30 October 2007, in Case R 1380/2006-3;
- order the OHIM to pay the costs of the proceedings before the Court and Board of Appeal.