

- that an order be substituted that the application for *restitutio in integrum* was brought within the time-limits as prescribed by Article 78(2);
- that the matter be referred back to the Fourth Board of Appeal for them to deal with the substantive issue as to whether all due care was taken to renew the trade mark concerned;
- that the costs be borne by the defendant.

### Pleas in law and main arguments

*Community trade mark concerned:* The figurative Community trade mark 'QWIK TUNE' for goods and services in classes 9 and 15 — application No 117 994

*Decision of the Administration of Trade Marks and Legal Division:* Refused the request for *restitutio in integrum* and declared the trade mark as deemed to have been cancelled

*Decision of the Board of Appeal:* Dismissed the appeal and declared the *restitutio in integrum* request as deemed not to have been filed

*Pleas in law:* The pleas in law and main arguments relied on by the applicant are identical or similar to those relied on in Case T-20/08, *Evets/OHIM (DANELECTRO)*.

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### Action brought on 16 January 2008 — Weldebräu v OHIM — Kofola Holding (Shape of a bottle)

(Case T-24/08)

(2008/C 64/100)

*Language in which the application was lodged: German*

#### Parties

*Applicant:* Weldebräu GmbH & Co. KG (Plankstadt, Germany) (represented by W. Göpfert, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Kofola Holding a.s. (Ostrava, Czech Republic)

### Form of order sought

- annulment of the decision of the Fourth Board of Appeal of 15 November 2007 in Case R 1096/2006-4;
- the defendant to be ordered to pay the costs.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* Kofola Holding a.s.

*Community trade mark concerned:* the three-dimensional mark 'shape of a bottle' for goods in Classes 30, 32 and 33 (Application No 3 367 539)

*Proprietor of the mark or sign cited in the opposition proceedings:* the applicant

*Mark or sign cited in opposition:* the three-dimensional mark 'shape of a bottle' for goods in Classes 21, 32 and 33 (Community trade mark No 690 016)

*Decision of the Opposition Division:* Rejection of the opposition

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

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 <sup>(1)</sup>, as there is a likelihood of confusion between the marks in opposition.

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

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### Action brought on 11 January 2008 — Katjes Fassin v OHIM (Yoghurt-Gums)

(Case T-25/08)

(2008/C 64/101)

*Language in which the application was lodged: German*

#### Parties

*Applicant:* Katjes Fassin GmbH & Co. KG (Emmerich, Germany) (represented by R. Uecker, lawyer)

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