

### Pleas in law and main arguments

On 29 March 1996 the European Community, represented by the Commission, entered into a contract BU 183/95 UK/AT with Sidney C. Banks Plc and Jenbacher Energiesysteme AG for the implementation of the project 'Advanced automated gasifier with CHP using waste wood as fuel' under the Community activities in the field of non-nuclear energy <sup>(1)</sup>. Pursuant to the contract provision, the Commission made an advance payment of its contribution for the project to the designated contract coordinator, Sydney C. Banks Plc.

By fax dated 25 September 1996, Sidney C. Banks Plc informed the Commission that it had decided to withdraw from the project. On 17 April 1998 the European Community, represented by the Commission, entered into Addendum No 1 to the contract by which Atlantic Energy Ltd replaced Sidney C. Banks Plc as a party to, and coordinator under the contract.

Pursuant to clause 2 of the Addendum Sidney C. Banks Plc transferred the advance payment received from the Commission (plus interest) to Atlantic Energy Ltd in April 1998.

The Commission claims an order that Atlantic Energy Ltd repay the advance payment plus interest on the grounds either that the project never effectively commenced or, if it did, was terminated by the Commission.

<sup>(1)</sup> Council Decision 94/806/EC of 23 November 1994 adopting a specific programme for research and technological development, including demonstration, in the field of non-nuclear energy (1994 to 1998) (OJ L 334, 22.12.1994, p. 87).

### Action brought on 16 May 2008 — Schuhpark Fascies v OHIM — Leder & Schuh (jello SCHUHPARK)

(Case T-183/08)

(2008/C 171/89)

Language in which the application was lodged: German

#### Parties

*Applicant:* Schuhpark Fascies GmbH (Warendorf, Germany) (represented by: A. Peter and J. Braune, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Leder & Schuh AG (Graz, Austria)

#### 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 13 March 2008 in appeal proceedings R 1560/2006-4;
- Order the defendant to pay the costs incurred by the applicant.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* Leder & Schuh AG.

*Community trade mark concerned:* The word and figurative mark 'jello SCHUHPARK' for goods in Classes 1, 3, 9, 14, 16, 18, 21, 24-26 and 28 (Application No 1 269 372).

*Proprietor of the mark or sign cited in the opposition proceedings:* Schuhpark Fascies GmbH.

*Mark or sign cited in opposition:* The German word mark 'Schuhpark' for goods in Class 25 (No 1 007 149), in respect of opposition to the registration for goods in Classes 18, 21, 25 and 26.

*Decision of the Opposition Division:* Opposition upheld in part and application rejected in part.

*Decision of the Board of Appeal:* Annulment of the appealed decision and rejection of the opposition.

*Pleas in law:* Infringement of the second sentence of Article 43(2) and Article 43(3) of Regulation (EC) No 40/94 <sup>(1)</sup> and breach of the second sentence of Rule 22(2) of Regulation (EC) No 2868/95 <sup>(2)</sup> in that the applicant has sufficiently proved that the opposition mark has been used in a manner which preserves its rights.

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

<sup>(2)</sup> Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

### Action brought on 13 May 2008 — Rodd & Gunn Australia v OHIM (Representation of a dog)

(Case T-187/08)

(2008/C 171/90)

Language in which the application was lodged: English

#### Parties

*Applicant:* Rodd & Gunn Australia Limited (Wellington, New Zealand) (represented by: B. Brandreth, Barrister and N. Jenkins, Solicitor)

*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 12 March 2008 in case R 1245/2007-4;
- order *restitutio in integrum* in respect of Community trade mark No 339 218; and
- order OHIM to pay the costs.