

**Pleas in law and main arguments**

*Registered Community trade mark subject of the application for a declaration of invalidity:* The word mark 'BOTOLIST' for goods in class 3 — Community trade mark registration No 2 686 392

*Proprietor of the Community trade mark:* The applicant

*Party requesting the declaration of invalidity of the Community trade mark:* The other party to the proceedings before the Board of Appeal

*Trade mark right of the party requesting the declaration of invalidity:* Community trade mark registration No 2 015 832 of the figurative mark 'BOTOX' for goods in class 5; Community trade mark registration No 2 575 371 of the figurative mark 'BOTOX' for goods in class 5; Community trade mark registration No 1 923 986 of the figurative mark 'BOTOX' for goods in class 5 and 16; Community trade mark registration No 1 999 481 of the word mark 'BOTOX' for goods in class 5; various registrations of the trade mark 'BOTOX' in the Member States of the European Communities.

*Decision of the Cancellation Division:* Rejection of the application for a declaration of invalidity

*Decision of the Board of Appeal:* Annulment of the decision of the Cancellation Division

*Pleas in law:* Infringement of Article 8(5) of Council Regulation No 40/94 as there is no proof that the earlier trade marks had reputation in the relevant point in time, as the conflicting trade marks are not sufficiently similar, as there is further no proof that the use of the registered Community trade mark subject of the application for a declaration of invalidity would be detrimental to the distinctiveness and reputation of the earlier trade marks and that there is no proof that the applicant acted without due cause when adopting the registered Community trade mark subject of the application for a declaration of invalidity; infringement of Article 73 of Council Regulation No 40/94 as the contested decision does not state the reasons on which it is based.

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

*Other party to the proceedings before the Board of Appeal:* Touchnet Information Systems, Inc. (Lenexa, United States)

**Form of order sought**

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 May 2008 in case R 493/2007-2;
- In the alternative, annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 May 2008 in case R 493/2007-2 to such extent as the court may deem fit; and
- Order the defendant to pay the costs.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'iTouch' for services in classes 38 and 42

*Proprietor of the mark or sign cited in the opposition proceedings:* The other party to the proceedings before the Board of Appeal

*Mark or sign cited:* Community trade mark registration No 1 449 503 of the word mark 'TOUCHNET' for goods and services in classes 9, 37 and 42

*Decision of the Opposition Division:* Upheld the opposition in its entirety

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

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that there exists a likelihood of confusion between the conflicting trade marks.

**Action brought on 20 August 2008 — iTouch International v OHIM — Touchnet Information Systems (iTouch)**

(Case T-347/08)

(2008/C 272/85)

*Language in which the application was lodged:* English

**Parties**

*Applicant:* iTouch International plc (London, United Kingdom) (represented by: T. Alkin, Barrister)

**Action brought on 22 August 2008 — Papierfabrik Hamburger-Spremborg v Commission**

(Case T-350/08)

(2008/C 272/86)

*Language of the case:* German

**Parties**

*Applicant:* Papierfabrik Hamburger-Spremborg GmbH & Co. KG (Spremborg, Germany) (represented by: S. Polster, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Annul the contested Commission Decision C(2008) 1107 final of 2 April 2008 in State aid case N 582/2007 — Germany, according to which the regional aid in favour of Propapier PM 2 GmbH & Co. KG is compatible with the EC Treaty;
- Order the Commission to pay the applicant's costs.

**Pleas in law and main arguments**

The applicant contests Commission Decision C(2008) 1107 final of 2 April 2008, by which the Commission declared that the regional aid which the Federal Republic of Germany approved for Propapier PM 2 is compatible with the EC Treaty.

The applicant relies on the following three pleas in law in support of its action.

First, the applicant alleges that, by not opening the formal investigation procedure, the Commission infringed Article 88(2) EC, Article 4 of Regulation (EC) No 659/1999<sup>(1)</sup> and paragraph 68 *et seq.* of the Guidelines on national regional aid for 2007-2013<sup>(2)</sup>.

By its second plea in law the applicant complains that the obligation to provide reasons was infringed in relation to the nature of the regional aid Guidelines as the exclusive basis for the decision; it also complains of infringements in relation to the need to take into account the market for recycled fibre as the upstream market for corrugated case material and regarding the assessment of the competitive position on those markets and on the downstream corrugated board market of the recipient of State aid Propapier PM 2.

Finally the applicant claims with reference to the distortion of competition associated with the investment project affecting a total of three product markets that the regional aid approved for Propapier PM 2 is incompatible with the common market.

<sup>(1)</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

<sup>(2)</sup> OJ 2006 C 54, p. 13.

**Action brought on 1 September 2008 — L'Oréal v OHIM — Allergan (BOTOCYL)****(Case T-357/08)**

(2008/C 272/87)

*Language in which the application was lodged: English***Parties**

*Applicant:* L'Oréal SA (Clichy, France) (represented by: A. von Mühlendahl and J. Pagenberg, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Allergan, Inc. (Irvine, United States)

**Form of order sought**

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 June 2008 in case R 865/2007-1;
- Dismiss the appeal filed by the other party to the proceedings before the Board of Appeal against the decision of the Cancellation Division of the defendant taken on 4 April 2007 in case 1120 C;
- Order the defendant to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal; and
- Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal, should it become an intervening party in this case.

**Pleas in law and main arguments**

*Registered Community trade mark subject of the application for a declaration of invalidity:* The word mark 'BOTOCYL' for goods in class 3 — Community trade mark registration No 2 782 282

*Proprietor of the Community trade mark:* The applicant

*Party requesting the declaration of invalidity of the Community trade mark:* The other party to the proceedings before the Board of Appeal

*Trade mark right of the party requesting the declaration of invalidity:* Community trade mark registration No 2 015 832 of the figurative mark 'BOTOX' for goods in class 5; Community trade mark registration No 2 575 371 of the figurative mark 'BOTOX' for goods in class 5; Community trade mark registration No 1 923 986 of the figurative mark 'BOTOX' for goods in class 5 and 16; Community trade mark registration No 1 999 481 of the word mark 'BOTOX' for goods in class 5; various registrations of the trade mark 'BOTOX' in the Member States of the European Communities.

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