

Fifth, the applicant submits that the Commission infringed Article 87(3)(a) and (c) EC by failing to recognize any role for the applicant's PPA in securing the necessary investment in a modern, upgraded plant.

Sixth, in the applicant's opinion, the Commission infringed its duty to ensure legal specificity in respect of recovery, failed to qualify the scope and value of the 'purchase obligations' and based its recovery order on hypothetical elements.

Finally, the applicant claims that the Commission infringed the fundamental principles of Community law in ordering recovery of the alleged aid.

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**Action brought on 22 October 2008 — Companhia Muller de Bebidas v OHIM — Missiato Industria e Comercio (61 A NOSSA ALEGRIA)**

(Case T-472/08)

(2009/C 6/75)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Companhia Muller de Bebidas (Pirassununga, Brazil) (represented by: G. Da Cunha Ferreira and I. Bairrão, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Missiato Industria e Comercio Lda (Santa Rita do Passa Quatro, Brazil)

**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 4 July 2008 in case R 1687/2007-1, inasmuch as it upheld the decision allowing the registration of the Community trade mark concerned;
- Declare the registration of the Community trade mark concerned invalid for all goods protected, on the basis that there is a likelihood of confusion with the trade marks cited in the opposition proceedings; and
- Order the defendant and the other party to the proceeding before the Board of Appeal to pay the costs.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The other party to the proceedings before the Board of Appeal

*Community trade mark concerned:* The figurative mark '61 A NOSSA ALEGRIA' for goods in class 33

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

*Mark or sign cited:* Portuguese trade mark registration No 273 105 of the figurative mark 'CACHAÇA 51' for goods in class 33; Portuguese trade mark registration No 331 952 of the figurative mark 'CACHAÇA 51' for goods in class 33; Benelux trade mark registration No 576 901 of the figurative mark 'CACHAÇA 51' for goods in classes 32 and 33; Danish trade mark registration No VR 1998 03649 of the figurative mark 'CACHAÇA 51' for goods in class 33; United Kingdom trade mark registration No 2 248 316 of the series of figurative marks 'CACHAÇA 51' for goods in class 33; Spanish trade mark registration No 2 354 943 of the figurative mark 'CACHAÇA 51' for goods in class 33; German trade mark registration No 30 071 545 of the figurative mark 'CACHAÇA 51'; Austrian trade mark registration No 161 564 of the figurative mark 'CACHAÇA 51' for goods in class 33; Portuguese well-known figurative trade mark 'CACHAÇA 51' for goods in class 33; Portuguese well-known word trade mark 'CACHAÇA 51' for goods in class 33.

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

*Decision of the Board of Appeal:* Dismissed 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 is no likelihood of confusion between the conflicting trade marks; Infringement of Article 52(1)(a) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that the evidence submitted by the applicant was not sufficient to prove the well known character of the earlier trade marks in Portugal, or, at least its enhanced distinctiveness as a whole.

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**Action brought on 28 October 2008 — Apollo Group v OHIM (THINKING AHEAD)**

(Case T-473/08)

(2009/C 6/76)

*Language of the case: English*

**Parties**

*Applicant(s):* Apollo Group, Inc. (Phoenix, United States) (represented by A. Jaeger-Lenz and A. Link, lawyers)

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