

Information relating to the case

Mark concerned:	Figurative mark representing a chevron with perforated border for goods in Classes 10 and 25 (International Registration designating the European Community, No W00881226)
Decision of the examiner:	Protection refused
Decision of the Board of Appeal:	Appeal dismissed

Operative part

1. Dismisses the action;
2. Orders Deichmann SE to pay the costs.

**Judgment of the General Court (Eighth Chamber) of 13 April 2011 —
Alder Capital v OHIM – Gimv Nederland (ALDER CAPITAL)**

(Case T-209/09)

(Community trade mark — Invalidity proceedings — Community word mark ALDER CAPITAL — Earlier Benelux word marks Halder and Halder Investments — Earlier international word mark Halder — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) and Article 52(1)(a) of Regulation (EC) No 40/94 (now Article 8(1)(b) and Article 53(1)(a) of Regulation (EC) No 207/2009) — Genuine use of the trade mark — Article 15 of Regulation No 40/94 (now Article 15 of Regulation No 207/2009)

1. *Community trade mark — Appeals procedure — Appeal against a decision by a unit of the Office — Examination by Board of Appeal — Scope — Action against a decision upholding an opposition (Council Regulation No 40/94, Art. 62(1)) (see paras 20-22)*

2. *Community trade mark — Surrender, revocation and invalidity — Examination of the application — Proof of use of the earlier mark — Genuine use — Concept — Criteria for assessment — Company name, commercial name or trade name (Council Regulation No 40/94, Art. 43(2) and (3)) (see paras 44-48)*

3. *Community trade mark — Surrender, revocation and invalidity — Relative grounds of invalidity — Existence of an identical or similar earlier trade mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark (Council Regulation No 40/94, Arts 8(1)(b) and 52(1)(a)) (see paras 80-81, 93)*

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 20 February 2009 (Case R 486/2008-2) in relation to invalidity proceedings between Halder Holdings BV and Alder Capital Ltd.

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Registered Community trade mark of which cancellation sought:	Word mark ALDER CAPITAL for services in Class 36
Proprietor of the Community trade mark:	Alder Capital Ltd

Party requesting the declaration of invalidity of the Community trade mark:	Gimv Nederland BV
Trade mark of the party seeking cancellation:	Benelux trade mark registrations of the word mark Halder and Halder Investments for services in Classes 35 and 36; International registration of the word mark Halder for services in Classes 35 and 36; unregistered trade and company names Halder, Halder Holdings, Halder Investments and Halder Interest used in the course of trade
Decision of the Cancellation Division:	Community trade mark cancelled
Decision of the Board of Appeal:	Appeal dismissed

Operative part

1. Dismisses the action;

2. Orders Alder Capital Ltd to pay the costs, including the costs necessarily incurred by Gimv Nederland BV for the purposes of the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).