

# Case T-385/09

**Ancco, Inc.**

**v**

## **Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)**

(Community trade mark — Opposition proceedings — Application for the Community word mark ANN TAYLOR LOFT — Earlier national word mark LOFT — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

Judgment of the General Court (Eighth Chamber), 17 February 2011 . . . . II - 457

### Summary of the Judgment

1. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark*  
(Council Regulation No 207/2009, Art. 8(1)(b))
2. *Community trade mark — Appeals procedure — Appeals before the Community judiciary — Jurisdiction of the General Court — Amendment of a decision by the Office — Assessment in the light of the powers conferred on the Board of Appeal*  
(Council Regulation No 207/2009, Art. 64(1))

1. For the average French consumer there is no likelihood of confusion within the meaning of Article 8(1)(b) of Regulation No 207/2009 on the Community trade mark between the word sign ANN TAYLOR LOFT, for which registration as a Community mark is sought in respect of leather goods and clothing articles in classes 18 and 25 respectively under the Nice Agreement, and the word mark LOFT, registered earlier in France for identical products.
2. Since the Board of Appeal is itself empowered, under Article 64(1) of Regulation No 207/2009 on the Community trade mark, to exercise any power within the competence of the department which was responsible for the decision contested before it, the Court may, in the context of its power to alter decisions, exercise any power within the competence of the lower departments of the Office for Harmonisation in the Internal Market (Trade Marks and Designs), whose decisions are subject to appeal before the Board of Appeal. Accordingly, the Court may, in this context, take a decision that could have been taken by the examiner, the Opposition Division or the Cancellation Division. On the other hand, it may not take decisions that do not fall within the competence of those departments. This is why the Court cannot register a trade mark, as that registration does not come within the competence of the examiner or of the Opposition Division.

Notwithstanding the identical nature of the goods at issue, having regard to the existence of a weak similarity between the signs at issue, the target public, accustomed to the same clothing company using sub-brands that derive from the principal mark, will not be able to establish a connection between the signs ANN TAYLOR LOFT and LOFT, since the earlier mark does not include the ‘ann taylor’ element, which is the most distinctive element in the mark applied for.

(see paras 22, 48)

(see para. 52)