

**Form of order sought**

— Annul the Commission Decision of 21 October 2008 on State aid C 20/2008 (ex N 62/2008) which Italy is planning to implement through a modification of scheme N 59/2004 concerning a temporary defensive mechanism to ship-building, registered as number C(2008)6015 final, notified to the Italian Republic on 22 October 2008 by note of 22 October 2008 No SG-Greffe (2008) D/206436.

**Pleas in law and main arguments**

The decision contested in the present case is the same as that contested in Case T-584/08 *Cantiere Navale De Poli v Commission*.

The pleas in law and main arguments are similar to those put forward in that case.

**Action brought on 5 January 2009 — UniCredit v OHIM — Union Investment Privatfonds (UniCredit)**

(Case T-4/09)

(2009/C 55/82)

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

*Applicant:* UniCredit SpA (Rome, Italy) (represented by: G. Florida, lawyer, and R. Florida, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Union Investment Privatfonds GmbH (Frankfurt am Main, Germany)

**Form of order sought**

— Annul the decision of the Second Board of Appeal of OHIM delivered on 3 November 2008 in Case R 1449/2006-2, relating to opposition proceedings No B 699.746.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant.

*Community trade mark concerned:* Multi-coloured figurative mark '1 UniCredit' (the number one being 45° inclined to the right and impressed on the spherical logo) (registration application No 2.911.105), for goods and services in Classes 9, 16, 35, 36, 38, 39, 41 and 42.

*Proprietor of the mark or sign cited in the opposition proceedings:* Union Investment Privatfonds GmbH.

*Mark or sign cited in opposition:* German word marks 'UniSECTOR', 'UniDynamicFonds' and 'UniGarant', for services in Classes 35 and 36.

*Decision of the Opposition Division:* Opposition upheld in respect of the services in Class 36.

*Decision of the Board of Appeal:* Appeal dismissed.

*Pleas in law:* Misapplication of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark. The applicant argues that the contested decision did not take account of the powers of perception of the public at which the services covered are directed or of the non-existent or minimal distinctiveness of the prefix 'Uni'.

**Appeal brought on 15 January 2009 by Luigi Marcuccio against the order of the Civil Service Tribunal delivered on 4 November 2008 in Case F-133/06 Marcuccio v Commission**

(Case T-9/09 P)

(2009/C 55/83)

*Language of the case: Italian***Parties**

*Appellant:* Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

*Other party to the proceedings:* Commission of the European Communities

**Form of order sought by the appellant**

— In every case

(A.1) set aside in its entirety and without exception the order under appeal;

(A.2) declare the action at first instance to be admissible in full.

— As a primary remedy:

(B.1) uphold in their entirety and without exception the appellant's pleas in law set out in the application at first instance;

(B.2) order the respondent to pay the appellant's costs relating to this appeal and to the proceedings at first instance;

— or, in the alternative:

(B.3) refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.

### Pleas in law and main arguments

This appeal is directed against the order of the Civil Service Tribunal of 4 November 2008 in Case F-133/06 *Marcuccio v Commission*.

In support of the forms of order sought by him, the appellant raises the following pleas in law:

- (a) complete failure to carry out preliminary investigations and failure to rule on a fundamental aspect of the dispute, in so far as the order under appeal fails to adjudicate on the application for a declaration that there is no legal basis for the decision contested before the Civil Service Tribunal.
- (b) complete failure to state adequate reasons in the order under appeal as regards the inadmissibility of the requests that 'the Commission be ordered to return his personal property to the applicant', 'that the contested decision be annulled' and of 'the application for damages', as regards the order that the appellant should pay the costs, and distortion and misrepresentation of the facts, complete failure to carry out any preliminary investigations, confusion and irrationality, and also the erroneous and incorrect interpretation and application of the Community legislation and case-law.
- (c) a procedural error, in that no account was taken of the requirement not to have regard to the arguments contained in the defence in so far as made out of time by the respondent, in a manner which was prejudicial to the interests of the appellant.
- (d) infringement of the rules relating to a fair hearing.

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### Action brought on 14 January 2009 — Formula One Licensing v OHIM — Racing — Live (F1 — Live)

(Case T-10/09)

(2009/C 55/84)

*Language in which the application was lodged: English*

### Parties

*Applicant:* Formula One Licensing BV (Amsterdam, The Netherlands) (represented by: B. Klingberg, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Racing — Live SA (Montpellier, France)

### 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 16 October 2008 in case R 7/2008-1;
- Order the defendant to pay the costs of proceedings; and

- Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings before the defendant.

### 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 'F1 — Live', for goods and services in classes 16, 38 and 41

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

*Mark or sign cited:* International trade mark registration No 732 134 of the word mark 'F1' for goods and services in classes 16, 38 and 41; German trade mark registration No 30 007 412 of the word mark 'F1' for services in class 41; United Kingdom trade mark registration No 2 277 746 D of the word mark 'F1' for goods and services in classes 16 and 38; Community trade mark registration No 631 531 of the figurative mark 'F1 Formula 1' for goods and services in classes 16, 38 and 41; other marks such as 'F1 Racing Simulation', 'F1 Pole Position' and 'F1 Pit Stop Café'

*Decision of the Opposition Division:* Rejected the Community trade mark application

*Decision of the Board of Appeal:* Annulled the contested decision, rejected the opposition and allowed the Community trade mark application to proceed

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal wrongly assessed that there was no likelihood of confusion between the trade marks concerned; infringement of Article 8(5) of Council Regulation 40/94 as the Board of Appeal failed to find that use of the Community trade mark concerned would without due cause take unfair advantage of, and be detrimental to, the distinctive character or the repute of the applicant's earlier trade marks.

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### Action brought on 14 January 2009 — Özdemir v OHIM — Aktieselskabet af 21. november 2001 (James Jones)

(Case T-11/09)

(2009/C 55/85)

*Language in which the application was lodged: English*

### Parties

*Applicant:* Rahmi Özdemir (Dreieich, Germany) (represented by: M. Heinrich, I. Hoes, C. Schröder, K. von Werder and J. Wittenberg, lawyers)