

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 30 October 2008 in case R 228/2008-1 and, by way of correction, reject the opposition entirely;
- Alternatively, annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 October 2008 in case R 228/2008-1 and remit the case to OHIM;
- Alternatively, annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 October 2008 in case R 228/2008-1; and
- Order the other party to the proceedings before the Board of Appeal 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 'dm', for goods in classes 1, 3-6, 8-11, 14, 16, 18, 20-22, 24-32, 34 and for services in class 40

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: Spanish trade mark registration No 2 561 742 of the figurative mark 'DM' for goods and services in classes 9 and 39

Decision of the Opposition Division: Partially allowed the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 57 and 59 of Council Regulation 40/94 as the Board of Appeal erred in its finding that the letter of the defendant of 8 June 2007 did not suspend the appeal period; Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal wrongly assessed that there was a likelihood of confusion between the trade marks concerned due to the similarity of the goods covered; Infringement of Rules 17(2) and (4) of Commission Regulation No 2868/95⁽¹⁾, as the Board of Appeal failed to find that the other party to the proceedings before the Board of Appeal failed to state the essential details of the opposition.

⁽¹⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 26 January 2009 — Advance Magazine Publishers v OHIM — Selecciones Americanas (VOGUE CAFÉ)

(Case T-40/09)

(2009/C 82/55)

Language in which the application was lodged: English

Parties

Applicant: Advance Magazine Publishers, Inc. (New York, United States) (represented by: T. Alkin, Barrister)

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

Other party to the proceedings before the Board of Appeal: Selecciones Americanas, SA (Sitges (Barcelona), Spain)

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 November 2008 in case R 280/2008-4 insofar as it relates to the opposition based on Spanish trade marks registration No 255 186 and 2 529 728;
- Alter the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 November 2008 in case R 280/2008-4 such that consideration of the opposition is suspended pending the outcome of the opposition for Community trade mark application No 3 064 219; and
- Order the other party to the proceedings before the Board of Appeal 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 'VOGUE CAFÉ', for goods and services in classes 21, 25 and 43

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: Spanish trade mark registration No 255 186 of the figurative mark 'Vogue Juan Fort, S.A. — Badalona' for goods in class 25; Spanish trade mark registration No 2 529 728 of the figurative mark 'VOGUE studio' for goods in class 25; Community trade mark application No 3 064 219 of the figurative mark 'VOGUE' for goods and services in classes 25, 35 and 39.

Decision of the Opposition Division: Allowed the opposition for the goods applied for in class 25

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 43(2) of Council Regulation 40/94 and/or of Rule 22(3) of Commission Regulation No 2868/95 ⁽¹⁾ as the Board of Appeal erred in its finding the evidence submitted by the other party to the proceedings before the Board of Appeal was capable of proving use of Spanish trade mark registration No 255 186; Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal wrongly assessed that there was a likelihood of confusion between the Community trade mark concerned and Spanish trade mark registration No 2 529 728; Infringement of Rules 20(7) of Commission Regulation No 2868/95 as the Board of Appeal stated inapplicable grounds for refusing to grant a suspension of proceedings pending determination of the opposition to Community trade mark application No 3 064 219.

⁽¹⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 27 January 2009 — Hipp & Co v OHIM — Nestlé (Bebio)

(Case T-41/09)

(2009/C 82/56)

Language in which the application was lodged: English

Parties

Applicant: Hipp & Co (Sachseln, Switzerland) (represented by: A. Bognár and M. Kinkeldey, lawyers)

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

Other party to the proceedings before the Board of Appeal: Société des Produits Nestlé, S.A. (Vevey, Switzerland)

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 25 November 2008 in case R 1790/2007-2; and

— Order OHIM 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 'Bebio', for goods in classes 5, 29, 30 and 32

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: International trade mark registration No 187 436 of the word mark 'BEBA' for goods in classes 5, 29 and 30; Community trade mark registration No 3 043 387 of the word mark 'BEBA' for goods in classes 5, 29 and 30

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal wrongly assessed that there was a likelihood of confusion between the trade marks concerned

Action brought on 9 February 2009 — Commission v Antiche Terre

(Case T-51/09)

(2009/C 82/57)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: A. Dal Ferro, lawyer, V. Joris, Agent)

Defendant: Antiche Terre scarl Società Agricola Cooperativa (Arezzo, Italy)

Forms of order sought

— Order the defendant to repay the principal sum of EUR 479 332,40, together with the interest accrued at the rate set out in Article 5.4.3 of the general conditions of the Contract (ECB rate + 2 %) from the date of receipt of the sums (from 4 December 1997 for the sum of EUR 461 979,00, and from 18 December 1997 for the sum of EUR 17 353,40) until 1 April 2003, in addition to the interest accrued at the same rate from 4 January 2004 until the date of final settlement, less the sum of EUR 461 979 called on and paid on 25 January 2005;