

In the alternative, the applicant submits that the Commission has not used the discretion given to it pursuant to Article 24(2) of Regulation (EEC) No 4253/88. The lump sum corrections were disproportionate and the extrapolation was incorrectly calculated.

The applicant complains in addition that insufficient reasons were given for the contested decision. The derivation and grounds for the size of the consolidation applied could not be deduced from those reasons.

Finally, the applicant submits that the defendant infringed the principle of cooperation, since, despite the finding of operational capability of the administrative and monitoring systems in an administrative agreement, it complains in the contested decision of systematic deficiencies in the administrative and monitoring systems.

---

(<sup>1</sup>) Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).

---

**Action brought on 16 March 2009 — Ravensburger v OHIM — Educa Borrás (MEMORY)**

(Case T-108/09)

(2009/C 129/27)

*Language in which the application was lodged: English*

**Parties**

*Applicants:* Ravensburger AG (Ravensburg, Germany) (represented by: R. Kunze, lawyer and Solicitor and G. Würtenberger, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Educa Borrás S.A. (Sant Quirze del Valles, Spain)

**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 8 January 2009 in case R 305/2008-2; and

— Order OHIM to pay the costs.

**Pleas in law and main arguments**

*Registered Community trade mark subject of the application for a declaration of invalidity:* The word mark “MEMORY” for goods in classes 9 and 28

*Proprietor of the Community trade mark:* The applicant

*Party requesting the declaration of invalidity of the Community trade mark:* The other party to the proceedings before the Board of Appeal

*Decision of the Cancellation Division:* Declared the Community trade mark concerned invalid

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 7(1)(b) and (c) in conjunction with Article 51(1)(a) of Council Regulation 40/94 as the Board of Appeal wrongly considered the term “memory” to be descriptive and lacking distinctive character at the time the cancellation proceedings took place, and thereby wrongly ignored that only those circumstances presented at the time of registration of the trade mark in question can be taken into account; Infringement of Article 7(1)(b) and (c) in conjunction with Article 51(1)(a) of Council Regulation 40/94 as the Board of Appeal wrongly considered the use of the term “memory” to be descriptive based on only two references of use within the European Community and without further determination whether these suggest descriptive use, thereby disregarding the long-term unchallenged use of the registered trade mark in question for games in a competitive consumer-oriented marketing; The Board of Appeal wrongly based its confirmation of the descriptive and non-distinctive character of the registered trade mark in question on unevaluated sources having their origin in countries outside the European Union; Infringement of Article 75 of Council Regulation 40/94 as the Board of Appeal erred when refusing to grant the request to summons for a hearing lodged by the applicant.

---

**Action brought on 19 March 2009 — PromoCell bioscience alive v OHIM (SupplementPack)**

(Case T-113/09)

(2009/C 129/28)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* PromoCell bioscience alive GmbH Biomedizinische Produkte (Heidelberg, Germany) (represented by K. Mende, lawyer)

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

**Form of order sought**

— Annul the decision of the Fourth Board of Appeal of 15 January 2009 in Case R 996/2008-4;

— Order the defendant to pay the costs.

**Pleas in law and main arguments**

*Community trade mark concerned:* the word mark ‘SupplementPack’ for goods and services in Classes 1, 3, 5, 41 and 42 (Application No 5 433 883)

*Decision of the Examiner:* rejection of the application

*Decision of the Board of Appeal:* dismissal of the appeal

*Pleas in law:* Infringement of Article 7(1)(b) and (c) of Council Regulation (EC) No 40/94 as the mark applied for has the requisite distinctive character and its availability does not have to be preserved

---

**Action brought on 30 March 2009 — Valigeria Roncato v OHIM — Roncato (CARLO RONCATO)**

(Case T-124/09)

(2009/C 129/29)

*Language in which the application was lodged:* Italian

**Parties**

*Applicant:* Valigeria Roncato SpA (Campodarsego, Italy) (represented by: P. Perani, lawyer, and P. Pozzi, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Roncato Srl (Campodarsego, Italy)

**Forms of order sought**

— Annul the decision of the First Board of Appeal of OHIM of 23 January 2009, notified on 30 January 2009, in joined cases R 237/2008-1 and R 263/2008-1;

— Order the defendant and the other party to the proceedings to pay the costs of these proceedings, as well as those incurred in the proceedings before the Board of Appeal.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* RONCATO Srl.

*Community trade mark concerned:* Word mark “CARLO RONCATO” (registration application No 4 631 719) for goods in Classes 3, 9 and 14.

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

*Mark or sign cited in opposition:* Italian figurative mark “RV RONCATO” (No 622 773), Italian word mark “RONCATO”

(No. 510 528) and non-registered Italian figurative marks “RV RONCATO”.

*Decision of the Opposition Division:* Opposition upheld in part.

*Decision of the Board of Appeal:* Rejected the opposition and upheld the application for registration in its entirety.

*Pleas in law:* Misapplication of Article 8(4) and (5) of Regulation (EC) No 40/94 on the Community trade mark.

---

**Action brought on 26 March 2009 — Gruener Janura AG v OHIM — Centum Aqua Marketing (HUNDERTWASSER)**

(Case T-125/09)

(2009/C 129/30)

*Language in which the application was lodged:* German

**Parties**

*Applicant:* Gruener Janura AG (represented by: P. Endres, 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:* Centum Aqua Marketing GmbH (Magdeburg, Germany)

**Form of order sought**

— Reject application No 4491891 for the trade mark ‘Hundertwasser’ for the following goods and services:

Class 20: Goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics;

Class 30: Sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice; confectionery, candylfloss;

Class 31: Agricultural, horticultural and forestry products and grains not included in other classes; live animals; seeds, natural plants and flowers; foodstuffs for animals; malt; products from organic farming, flowers, arrangements, plant arrangements;

Class 35: Advertising, marketing concepts;

Class 39: Transport, packaging and storage of goods; travel arrangement, exhibition guides, city and building guides, tourist services, package holidays;

— Order the applicant to pay the costs.