

- Declare, in short, that by its conduct towards its service provider, the applicant, the company MAPFRE MUTUALIDAD DE SEGUROS Y REASEGUROS A PRIMA FIJA (now known as MAPFRE SA), infringed the Spanish Law on the Protection of Competition and Articles 81 and 82 EC, by unilaterally setting the rates for the breakdown services provided, setting rates below the cost price of such services, unjustifiably and arbitrarily requiring the services to be performed subject to conditions not provided for under the contract (performance of the service using breakdown trucks displaying MAPFRE's logo), threatening to terminate the contract if such requirements were not met, and ultimately carrying out such a threat.
- Order the Commission to pay the costs of the present proceedings.

Pleas in law and main arguments

The applicant in the present proceedings is a family company that provides vehicle-towing services for breakdown assistance.

In its action, the applicant opposes MAPFRE SA's conduct, allegedly in breach of the competition rules, which, in a contractual relationship for the provision of breakdown services, when required by MAPFRE or its insureds, for vehicles insured by MAPFRE, required the breakdown service to be provided, as the applicant itself states, using vehicles displaying the MAPFRE logo and the MAPFRE trade mark to be advertised completely free of charge, with rates set below the actual cost of the service provided.

In support of its action, the applicant alleges infringement of the Community and national rules on competition.

Action brought on 2 October 2009 — Rosenruist v OHIM (Representation of two curves crossed at one point inserted on a pocket)

(Case T-388/09)

(2009/C 282/115)

Language of the case: English

Parties

Applicant(s): Rosenruist — Gestão e serviços, Lda (Funchal, Portugal) (represented by S. Gonzáles Malabia and S. Rizzo, lawyers)

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

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 18 June 2009 in case R 237/2009-2; and
- Order the defendant to pay its own costs and those of the applicant

Pleas in law and main arguments

Community trade mark concerned: The mark representing two curves crossed at one point inserted on a pocket for goods and services in classes 18 and 25

Decision of the examiner: Refused the application for a Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation 40/94 (which became Article 7(1)(b) of Council Regulation 207/2009) as the Board of Appeal wrongly found that the Community trade mark concerned lacked inherent distinctiveness.

Order of the Court of First Instance of 5 October 2009 — Commission v CAE Consulting Sven Rau

(Case T-474/07) ⁽¹⁾

(2009/C 282/116)

Language of the case: German

The President of the First Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 79, 29.3.2008.

Order of the Court of First Instance of 24 September 2009 — Johnson & Johnson v OHIM — Simca (YourCare)

(Case T-25/09) ⁽¹⁾

(2009/C 282/117)

Language of the case: Italian

The President of the Fourth Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 69, 21.3.2009.