

*Trade mark for which an extension of protection is sought:* the word mark 'ALLERNIL' for goods in Class 5 (international registration No 845 934, naming the European Community)

*Proprietor of the mark cited in opposition proceedings:* the applicant

*Mark cited in opposition:* the German word mark No 1 042 583 'ALLERGODIL' for goods in Class 5

*Decision of the Cancellation Division:* Rejection of the opposition

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

Pleas in law:

— Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009, <sup>(1)</sup> since the principles of trade mark law relating to the likelihood of confusion were not correctly applied;

— Infringement of Article 75 of Regulation No 207/2009 owing to deficiencies in the reasoning of the contested decision.

<sup>(1)</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1)

**Action brought on 7 December 2009 — LG Electronics v OHIM**

**(Case T-497/09)**

(2010/C 37/64)

*Language in which the application was lodged:* French

**Parties**

*Applicant:* LG Electronics, Inc. (Seoul, Republic of Korea) (represented by J. Blanchard, lawyer)

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

**Form of order sought**

- declare the present action to be admissible;
- annul in part the decision made on 23 September 2009 by the First Board of Appeal of OHIM in so far as it dismissed in part an action brought by LG ELECTRONICS against the decision of 5 February 2009 refusing registration of the

application for Community trade mark No 7 282 924 in so far as it applies to 'electronic vacuum cleaners';

— order OHIM to pay the costs.

**Pleas in law and main arguments**

*Community trade mark concerned:* The word mark 'KOMPRESSOR PLUS' for goods in Class 7 (Application No 7 282 924).

*Decision of the Examiner:* Rejection of the application for registration.

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

*Pleas in law:* Infringement of Article 7(1)(c) of Regulation (EC) No 207/2009 on the Community trade mark.

**Action brought on 14 December 2009 — Evonik Industries AG v OHIM (Representation of a purple rectangle with a rounded right side)**

**(Case T-499/09)**

(2010/C 37/65)

*Language in which the application was lodged:* German

**Parties**

*Applicant:* Evonik Industries AG (Essen, Germany) (represented by J. Albrecht, lawyer)

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

**Form of order sought**

— Annul the decision of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Fourth Board of Appeal) of 2 October 2009 (Case R 491/2009-4);

— order OHIM to pay the costs.

**Pleas in law and main arguments**

*Community trade mark concerned:* a figurative mark representing a rectangular shape in the colour Purple Pantone 513 C, for goods and services in classes 1 to 45 (Application No 7 235 179)

*Decision of the Examiner:* registration rejected

*Decision of the Board of Appeal: appeal dismissed*

*Pleas in law: misapplication of Article 7(1)(b) of Regulation No 207/2009<sup>(1)</sup>, on the ground that the trade mark concerned has the requisite distinctive character*

<sup>(1)</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

**Action brought on 7 December 2009 — Italy v Commission**

**(Case T-500/09)**

(2010/C 37/66)

*Language of the case: Italian*

#### Parties

*Applicant: Italian Republic (represented by: L. Ventrella, avvocato dello Stato)*

*Defendant: European Commission*

#### Form of order sought

— Annul in part Decision C (2009) 7044 of 24 September 2009, notified on 25 September 2009, excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), insofar as it applied to Italy, for the financial years 2005 and 2006:

- fixed-rate financial corrections (5 %) on account of various alleged weaknesses in controls in the fruit and vegetables sector — citrus processing — totalling EUR 3 539 679,81.

#### Pleas in law and main arguments

In support of its challenge, the Italian Republic pleads breach of an essential procedural requirement (Article 253 EC), on account of a failure to state adequate reasons, and breach of the principle of proportionality.

The applicant submits in that connection that the Commission corrected certain aid for citrus processing and, in implementing

those corrections, failed to ensure that adequate checks had been carried out as to whether the product delivered to the producers' organisations tallied with the product delivered to the processors and as to whether the product delivered for processing tallied with the finished product. According to the Italian Government, in the course of the procedure it had emerged that the checks had been carried out satisfactorily, in particular as regards both administrative/accounting checks and physical checks, at both the Organizzazione di Produttori (Producers' Organisation) and the processors; the checks were unannounced (without prior notice to the industry as to the date of the checks) and, in any event, were greater in number than that provided for in the relevant legislation. The essential point which the Commission should have addressed by stating adequate reasons in its decision was therefore whether the risk of loss to the Fund was 'significant', such as to justify a fixed-rate correction of 5 %, which appears, in any event, to be disproportionate.

**Action brought on 8 December 2009 — PhysioNova v OHIM — Flex Equipos de Descanso (FLEX)**

**(Case T-501/09)**

(2010/C 37/67)

*Language in which the application was lodged: German*

#### Parties

*Applicant: PhysioNova GmbH (Erlangen, Germany) (represented by: J. Klinik, 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: Flex Equipos de Descanso, SA (Madrid, Spain)*

#### Form of order sought

— Annul the contested decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 September 2009 in Case R 1/2009-1;

— amend the contested decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in Case R 1/2009-1 so as to overrule the decision of the Cancellation Division of 27 October 2008 in Case 2237 C;