

4. Fourth plea in law, alleging breach of the principle of sound administration in that the contested decision was taken without regard being had to the specific aspects of the case raised by the applicant in its response and without the applicant's being heard first.

(<sup>1</sup>) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1).

**Action brought on 7 February 2012 — AMC-Representações Têxteis v OHIM — MIP Metro (METRO KIDS COMPANY)**

(Case T-50/12)

(2012/C 109/45)

*Language in which the application was lodged: English*

#### Parties

*Applicant:* AMC-Representações Têxteis L<sup>da</sup> (Taveiro, Portugal) (represented by: V. Caires Soares, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* MIP Metro Group Intellectual Property GmbH & Co. KG (Düsseldorf, Germany)

#### 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 24 November 2011 in case R 2314/2010-1;

— Order the Defendant and, as appropriate, the Intervener in the proceedings to pay the costs.

#### Pleas in law and main arguments

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark 'METRO KIDS COMPANY', for goods and services in classes 24, 25 and 39 — Community trade mark application No 8200909

*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 in opposition:* International trade mark registration No 852751 of the figurative mark 'METRO', for goods

and services in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45

*Decision of the Opposition Division:* Upheld the opposition

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

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal erred in finding that the confronted marks were similar and the likelihood of confusion and/or association could not be excluded.

**Action brought on 8 February 2012 — Scooters India v OHIM — Brandconcern (LAMBRETTA)**

(Case T-51/12)

(2012/C 109/46)

*Language in which the application was lodged: English*

#### Parties

*Applicant:* Scooters India Ltd (Sarojiniagar, India) (represented by: B. Brandreth, Barrister)

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

*Other party to the proceedings before the Board of Appeal:* Brandconcern BV (Amsterdam, Netherlands)

#### 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 1 December 2011 in case R 2312/2010-1, insofar as the applicant's appeal against the revocation of the mark in respect of its registration for goods in class 12 was dismissed;

— Remit the case back to OHIM with a recommendation by the General Court that it find that the mark has been put to genuine use in relation to goods in class 12, namely 'scooters, parts and fittings for vehicles and apparatus for locomotion by land'; and

— Order the Defendant to pay the applicant's costs incurred before the Board of Appeal and the General Court.

#### Pleas in law and main arguments

*Registered Community trade mark in respect of which an application for revocation has been made:* The word mark 'LAMBRETTA', for goods in classes 3, 12, 14, 18 and 25 — Community trade mark registration No 1495100

*Proprietor of the Community trade mark:* The applicant

*Party applying for revocation of the Community trade mark:* The other party to the proceedings before the Board of Appeal

*Decision of the Cancellation Division:* Partially revoked the CTM registration No 1495100

*Decision of the Board of Appeal:* Partially annulled the decision of the Cancellation Division, dismissed the appeal for the remaining goods and dismissed the ancillary appeal

*Pleas in law:* Infringement of Article 50(2) of Council Regulation No 207/2009, as the Board of Appeal incorrectly decided to revoke the CTM for all goods in class 12 despite having held that there was evidence of genuine use of an identifiable sub-category of goods in class 12. Further, it erred in law in not applying the authority in the case of *Ansul BV v Ajax Brand-beveiliging* (C-40/01) to the effect that use in relation to parts preserves a registration for the goods of which those parts are an integral part.

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**Action brought on 8 February 2012 — K2 Sports Europe v OHIM — Karhu Sport Iberica (SPORT)**

(Case T-54/12)

(2012/C 109/47)

*Language in which the application was lodged:* English

**Parties**

*Applicant:* K2 Sports Europe GmbH (Penzberg, Germany) (represented by: J. Güell Serra, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Karhu Sport Iberica, SL (Cordoba, 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 29 November 2011 in case R 986/2010-4;

— Order OHIM to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The other party to the proceedings before the Board of Appeal

*Community trade mark concerned:* The figurative mark in black and white 'SPORT', for goods in classes 18, 25 and 28 — Community trade mark application No 7490113

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

*Mark or sign cited in opposition:* German trade mark registration No 302008015437 of the word mark 'K2 SPORTS', for goods in classes 18, 25 and 28; International trade mark registration No 982235 of the word mark 'K2 SPORTS', for goods in classes 18, 25 and 28

*Decision of the Opposition Division:* Rejected the opposition in its entirety

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

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal: (i) did not take into consideration the fact that, as a consequence of the identity in the goods at issue the differences between the marks are attenuated; (ii) made an incorrect assessment of the mark applied for, taking the view that there was no chance that the figurative element might be perceived by the public as a representation of the letter K; (iii) incorrectly presumed that being the word 'SPORT' understood in all the relevant territories, it should be omitted in the comparative analysis, (iv) erred in making the comparison of the signs; and (v) there is a likelihood of confusion between the conflicting marks even if the word 'SPORT' may have a weak distinctive character.

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**Action brought on 9 February 2012 — IRISL Maritime Training Institute and Others v Council**

(Case T-56/12)

(2012/C 109/48)

*Language of the case:* English

**Parties**

*Applicants:* IRISL Maritime Training Institute (Tehran, Iran), Kara Shipping and Chartering GmbH & Co. KG (Hamburg, Germany), Kheibar Co. (Tehran, Iran), Kish Shipping Line Manning Co. (Kish Island, Iran), Fairway Shipping Ltd (London, United Kingdom) and IRISL Multimodal Transport Co. (Tehran, Iran) (represented by: F. Randolph and M. Lester, Barristers, and M. Taher, Solicitor)

*Defendant:* Council of the European Union