

JUDGMENT OF THE COURT OF FIRST INSTANCE

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of 30 June 2004

of 8 July 2004

in Case T-186/02: BMI Bertollo Srl v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ⁽¹⁾

in Case T-203/02: The Sunrider Corp. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ⁽¹⁾

(Community trade mark — Opposition procedure — Earlier DIESEL word marks — Application for Community figurative trade mark DIESELIT — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

(Community trade mark — Opposition proceedings — Earlier word mark VITAFRUT — Application for Community word mark VITAFRUIT — Genuine use of the earlier trade mark — Similarity of products — Article 8(1)(b), Article 15 and Article 43(2) and (3) of Regulation (EC) No 40/94)

(2004/C 239/38)

(2004/C 239/39)

*(Language of the case: Italian)**(Language of the case: English)*

In Case T-186/02: BMI Bertollo Srl, established in Pianezze San Lorenzo (Italy), represented by F. Tedeschini, M. Pinnarò, P. Santer, V. Corbeddu and M. Bertuccelli, lawyers, with an address for service in Luxembourg, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: O. Montalto) intervening before the Court of First Instance being: Diesel SpA, established in Molvena (Italy), represented by G. Bozzola and C. Bellomunno, lawyers — action brought against the decision of the Third Board of Appeal of the OHIM of 19 March 2002 (Case R 525/2001-3), concerning an opposition procedure between BMI Bertollo Srl and Diesel SpA — the Court of First Instance (Fourth Chamber), composed of: H. Legal, President, V. Tiili and M. Vilaras, Judges; B. Pastor, Deputy Registrar, for the Registrar, has given a judgment on 30 June 2004, in which it:

In Case T-203/02: The Sunrider Corp., established in Torrance, California (United States), represented by A. Kockläuner, lawyer, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: S. Laitinen), the other party to the proceedings before the Board of Appeal of OHIM being: Juan Espadafor Caba, resident in Granada (Spain) — action brought against the decision of the First Board of Appeal of OHIM of 8 April 2002 (Case R 1046/2000-1), relating to opposition proceedings between Juan Espadafor Caba and The Sunrider Corp — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, A.W.H. Meij and N.J. Forwood, Judges; M. J. Plingers, Administrator, for the Registrar, has given a judgment on 8 July 2004 in which it:

1. Dismisses the action;

1. Dismisses the action;

2. Orders the applicant to pay the costs.

2. Orders the applicant to pay the costs.

⁽¹⁾ OJ C 191 of 10.8.2002.

⁽¹⁾ OJ C 233 of 28.9.2002.