

The third plea concerns assessment of the fine. In the applicants' view, such a large fine amounts to a penalty akin to those that might be imposed under criminal law, for which there is insufficient authority under the provisions of Article 23(3) of the Regulation ⁽¹⁾, since the legislature itself is required to specify in sufficient detail the particular basis on which the fine is to be assessed. In any event, the fine infringes Article 23(2) of Regulation 1/2003, as it amounts to more than 10 % of the total turnover of each of the two applicants and is completely disproportionate to the economic effects of the offence, as well as to the fine imposed on another associated undertaking. In addition, the applicants have been prejudiced by the arbitrary separation of the 'hard haberdashery: needles' case from the 'hard haberdashery: fasteners' case. Finally, the defendant failed to take into account various mitigating factors in the applicants' favour and to grant them a reduction in the fine for not disputing the facts.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 001, p. 1).

Action brought on 31 January 2005 by Camper, S.L., against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-43/05)

(2005/C 106/58)

(Language in which the application was lodged: English)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 31 January 2005 by Camper, S.L., established in Inca, Mallorca (Spain), represented by I. Temiñ o Cenicerros.

JC AB established in Mölnlycke, (Sweden) was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- accept the appeal against the Decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in the case R 170/2004-1, which rejected the appeal filed against the refusal of the Community trademark 1.954.601 in class 25;
- declare the registration of the Community trademark no. 1.954.601 'BROTHERS BY CAMPER' possible for all the products in class 25;
- order that each party will bear his own costs, and the common expenses in half.

Pleas in law and main arguments

Applicant for Community trade mark:	The applicant
Community trade mark concerned:	The figurative mark 'BROTHERS by CAMPER' for goods and services in classes 18, 25 and 39 (leather, clothing, footwear, headgear, transport ...) — application No 1 954 601
Proprietor of mark or sign cited in the opposition proceedings:	JC AB
Trade mark or sign cited in opposition:	The Swedish, Finnish and Danish figurative mark 'Brothers' for goods in class 25 (clothing, footwear and headgear)
Decision of the Opposition Division:	Rejection of the opposition insofar as it was based on the earlier Swedish registration. Opposition upheld for part of the contested goods, namely 'clothing, footwear, headgear' in class 25, insofar as it was based on the Danish and Finnish earlier registrations.
Decision of the Board of Appeal:	Dismissal of the applicant's appeal
Pleas in law:	The conflicting trademarks are not similar to such an extent that there exists a likelihood of confusion within the meaning of Article 8(1)(b) of Council Regulation No 40/94.