

The applicant claims that the Court should:

- annul the decision of the First Board of Appeal of the OHIM of 4 May 2005 (Case R 849/2004-1) in so far as it finds that the mark does not satisfy the conditions laid down in Article 7(1)(b) of Regulation No 40/94;
- order the OHIM to pay the costs.

Pleas in law and main arguments:

Community trade mark concerned: The three dimensional mark consisting of a square white tablet showing a green four petalled floral design for goods in class 3 (Washing and bleaching preparations and other substances for laundry use; preparations for the washing cleaning and care of dishes; soaps;...) — application No 1 684 059

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Violation of Article 7(1)(b) of Council Regulation No 40/94.

Action brought on 20 July 2005 by The Black & Decker Corporation against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-273/05)

(2005/C 217/113)

(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 20 July 2005 by The Black & Decker Corporation, established in Towson, Maryland (USA), represented by P. Harris, Solicitor.

Atlas Copco Aktiebolag established in Stockholm (Sweden), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- annul the contested decision of the First Board of Appeal of the OHIM of 3 May 2005 (Case R 786/2004-1);
- declare opposition proceedings B623 589 inadmissible;
- order that the costs occasioned by the applicant in the course of the present proceedings and its appeal be borne by the OHIM.

Pleas in law and main arguments

Applicant for Community trade mark: The applicant

Community trade mark concerned: Colour mark in black and yellow in Class 7 (manually operated portable electric power tools etc.)

Proprietor of mark or sign cited in the opposition proceedings: Atlas Copco Aktiebolag

Trade mark or sign cited in opposition: Non-registered trade marks and signs, used in the course of trade in all Member States for power tools

Decision of the Opposition Division: Rejects opposition as inadmissible

Decision of the Board of Appeal: Annuls the contested decision and remits the case to the Opposition Division for further prosecution

Pleas in law: The applicant claims that the opposition should have been declared inadmissible as it did not identify sufficiently clearly the earlier marks and signs relied on, in violation of Rule 18(1) of Regulation No. 2868/1995 ⁽¹⁾.

⁽¹⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark, OJ L 303, 15/12/1995, p. 1