

**Appeal brought on 10 August 2005 by Creative Technology Ltd against the judgment delivered on 25 May 2005 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-352/02 between Creative Technology Ltd and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), the other party to the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) being José Vila Ortiz**

(Case C-314/05 P)

(2005/C 296/23)

(Language of the case: English)

An appeal against the judgment delivered on 25 May 2005 by the Fourth Chamber of the Court of First Instance of the European Communities in case T-352/02 (1) between Creative Technology Ltd and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), the other party to the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) being José Vila Ortiz, was brought before the Court of Justice of the European Communities on 10 August 2005 by Creative Technology Ltd, established in Singapore (Singapore), represented by Stephen Jones and Paul Rawlinson, Solicitors.

The Appellant claims that the Court should:

- i) Set aside the judgment
- ii) Set aside the Decision of the Board of Appeal
- iii) Annul decision of the Opposition Division No 145/2001 be annulled
- iv) Allow the Applicant's Trade Mark to proceed to registration
- v) Order that the Opponent pays to the Applicant/Appellant the costs incurred by the Applicant/Appellant in connection with this appeal and the appeal before the CFI, the Board of Appeal and the opposition before the Opposition Division.

*Pleas in law and main arguments:*

The Appellant submits that the Community Trade Mark Application for the word PC WORKS is not confusingly similar to the earlier Spanish trade mark for the figurative mark that includes the words W WORK PRO. It is submitted that the Opposition Division, the Fourth Board of Appeal and the Court of First Instance erred in their respective analysis of the global appreciation of the marks in question and in particular the undue weight given to the WORK element present in both marks.

It is further submitted that the Opposition Division, the Fourth Board of Appeal and the Court of First Instance failed to recog-

nise that the goods in question are not casual purchases but bought by consumers after careful consideration and in particular that they failed to appreciate the proper characteristics of the reasonably well-informed and observant and circumspect member of the relevant public in that such a member of the relevant public in this case would not buy those goods without close examination.

Accordingly, it was wrong of the Court of First Instance to uphold the decisions of the Opposition Division and the Fourth Board of Appeal and reject the application in its entirety.

Hence, it is submitted that this appeal against the decision of the Opposition Division, the Fourth Board of Appeal and the Court of First Instance ought to be allowed, and the decisions of the Opposition Division, the Fourth Board of Appeal and the Court of First Instance ought to be annulled in their entirety. The Applicant/Appellant also seeks costs in these appeal proceedings and the proceedings before the Opposition Division, the Fourth Board of Appeal and the Court of First Instance.

(1) OJ C182, 23.07.05, p. 35

**Appeal brought on 28 July 2005 (received by fax on 27 July 2005) by Plus Warenhandels-gesellschaft mbH against the judgment of the Court of First Instance (Fourth Chamber) of 22 June 2005 in Case T-34/04 Plus Warenhandels-gesellschaft mbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

(Case C-324/05 P)

(2005/C 296/24)

(Language of the case: German)

On 28 July 2005 (received by fax on 27 July 2005), Plus Warenhandels-gesellschaft mbH, represented by P.H. Kort, M.W. Husemann and B. Piepenbrink, of Kort Rechtsanwälte (GBR), Ellerstraße 123/125, D-40227 Düsseldorf, Germany, brought an appeal before the Court of Justice of the European Communities against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 22 June 2005 in Case T-34/04 Plus Warenhandels-gesellschaft mbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).

The appellant claims that the Court should:

- set aside the judgment of the Court of First Instance (Fourth Chamber) of 22 June 2005 in Case T-34/04 (1);
- give final judgment on the case and find in favour of the application made at first instance, or, in the alternative, refer the case back to the Court of First Instance;
- order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings.

*Grounds of appeal and main arguments (Case C-324/05 P)*

By its appeal the appellant is seeking to prevent the use of the word mark 'POWER' in the trade mark applied for ('TURKISH POWER') from leading to a taking over of the rights associated with the earlier mark. It substantiates its appeal against the abovementioned judgment by alleging legal error in the application of current Community law on Community trade marks and that, by the judgment under appeal, the Court of First Instance changed its decision-making practice and infringed the principle of equal treatment:

1. The Court of First Instance failed to recognise that the rights of the earlier mark are infringed by the incorporation of the separate formative word mark 'POWER' in the trade mark applied for. The extent of the protection granted by the German authorities for the word 'POWER' is unlimited and consequently, the goods in question have the exclusive trade mark rights. It must remain possible and without restriction for the earlier trade mark to be combined with free-standing verbal or graphic elements, if this is required for it to be marketed. However, the judgment under appeal restricts the appellant's creative freedom.
2. The Court of First Instance failed to recognise that the trade mark applied for reuses the word contained in the earlier trade mark in a formative way and has taken it over as a trade mark. The dominance of the word 'POWER' in the trade mark applied for is not offset by the word 'TURKISH', since this, in a manner characteristic of the tobacco industry, alludes to the tobacco designation 'Turkish blend' frequently used in that industry. It can thus be considered as a reference to the Turkish origin of the tobacco mixture which is put together with the word 'POWER' to form the name of a trade mark. Therefore, the Court of First Instance erred in taking the view that the word combination 'TURKISH POWER' has a suggestive effect independent of the word 'POWER'.
3. The Court of First Instance erroneously concluded that there were sufficient aural differences between the two conflicting marks, since the danger of aural confusion between the two is sufficient in itself to prevent registration of the trade mark applied for. As regards the visual similarities of the two marks, the Court of First Instance failed to consider that, from a visual perspective also, trade marks are predominantly characterised by the words of which they are composed, because consumers are more familiar with words than with images and can remember them more easily. The conclusion that the words which make up the trade mark

applied for are dominated by the visual element is therefore unfounded.

4. The Court of First Instance erroneously assumed that the relevant public is particularly attentive: it is not established that consumers are more attentive when buying cigarettes than when buying groceries or other consumer goods. Even if particular attentiveness could none the less be assumed, it cannot be ruled out that the word mark 'POWER' will make customers think of the earlier mark and that the trade mark applied for would immediately be brought into connection with the appellant's company, that is to say, as a sub-brand of a Turkish mix of 'POWER' tobacco.

(1) OJ 2005 C 205, p. 21.

**Appeal brought on 15 September 2005 (fax 9 September 2005) by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) against the judgment delivered on 15 June 2005 by the Third Chamber of the Court of First Instance of the European Communities in Case T-7/04 between Shaker di L. Laudato & C. Sas and the Office for Harmonisation in the Internal Market, the other party to the proceedings being Limiñana y Botella, SL**

(Case C-334/05 P)

(2005/C 296/25)

(Language of the case: Italian)

An appeal against the judgment of the Third Chamber of the Court of First Instance of the European Communities of 15 June 2005 in Case T-7/04 between Shaker di L. Laudato & C. Sas and the Office for Harmonisation in the Internal Market was brought before the Court of Justice of the European Communities on 15 September 2005 by the Office for Harmonisation in the Internal Market, represented by O. Montalto and M. Capostagno, acting as Agents, the other party to the proceedings being Limiñana y Botella, SL.

The applicant claims that the Court should:

1. set aside the judgment under appeal;
2. order the Shaker to pay the costs.

*Pleas in law and main arguments*

The applicant considers that the judgment of the Court of First Instance under appeal in this case is vitiated by misinterpretation and misapplication of Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.