

Action brought on 5 December 2005 — Danjaq/OHIM**(Case T-435/05)**

(2006/C 60/79)

*Language in which the application was lodged: English***Parties**

Applicant: Danjaq LLC (Santa Monica, USA) [represented by: L. Berg, S. Skrein, Solicitors and G. Hobbs, G. Hollingworth, Barristers]

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

Other party to the proceedings before the Board of Appeal: Mission Productions GmbH (Munich, Germany)

Form of order sought

- Annul the decision of the Board of Appeal in case number R 1118/2004-1;
- allow the opponent's opposition to Community trade mark application number 2 256 378, or alternatively remit the opposition to the Office for Harmonisation in the Internal Market for further consideration in accordance with the judgment of the Court,
- award the opponent its costs of the proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark: Mission Productions GmbH

Community trade mark concerned: The word mark 'Dr. No' for goods in classes 9, 12, 18, 25 and 32 — application No 2 256 378

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

Mark or sign cited: The earlier well-known mark, earlier non-registered mark and earlier sign used in the course of trade 'Dr. No' and 'Dr. NO' for films, DVDs, comic books, music recordings, books, posters and action figures (toys)

Decision of the Opposition Division: Opposition rejected in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(2)(c) of Council Regulation No 40/94 as the Board of Appeal misinterpreted Article 6 bis of the Paris Convention by holding that use within the Community had to be proved by the applicant.

Infringement of Article 8(1)(a) and (b) of Council Regulation No 40/94 since there is a likelihood of confusion between the conflicting trade marks as the conflicting marks and several of the goods covered by these marks are identical.

Infringement of Articles 8(4) and 73 of Council Regulation No 40/94 and Rules 50(2) and 52(1) of Commission Regulation No 2868/95 because the Board of Appeal failed to consider the opposition under Article 8(4) of Council Regulation No 40/94 and should have recognised that the applicant was the proprietor of numerous earlier rights and that it had used the marks cited in the opposition in the course of trade.

Action brought on 16 December 2005 — IVG Immobilien AG v OHIM**(Case T-441/05)**

(2006/C 60/80)

*Language in which the application was lodged: German***Parties**

Applicant: IVG Immobilien AG (Bonn, Germany) (represented by A. Okonek and U. Karpenstein, lawyers)

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

Form of order sought

The applicant claims that the Court should:

- annul the decision of the Fourth Board of Appeal of OHIM of 1 September 2005 in Case R 559/2004-4 concerning Community trade mark application No 2 927 788 and order the defendant to register the 'I' mark for all goods and services applied for;
- order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The figurative 'I' mark for services in Classes 35, 36, 37, 39, 42 and 43 — Application No 2 927 788

Decision of the Examiner: Dismissal of the application for all services applied for

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 40/94, on the ground that the Board of Appeal overestimated the requirements for the distinctive character of letters. In addition it is incorrect that the stylised graphic representation of the large 'I' in Königsblau is without evocative force for the relevant public.