

Second, the applicant asserts that Article 5(1) of Regulation No 141/2000 is contrary to primary law and should be declared inapplicable pursuant to Article 241 EC in the event that it is to be interpreted as meaning that the application for designation of a medicinal product as an orphan medicinal product must be submitted before the application for marketing authorisation for that medicinal product. In that connection, it is submitted that that interpretation infringes the fundamental Community law principles of freedom to enjoy property rights and pursue a trade or profession, the principle of equal treatment and the principle of good faith.

(¹) Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products (OJ 2000 L 18, p. 1).

**Action brought on 16 July 2007 — Torres v OHIM —
Vinícola de Tomelloso (TORREGAZATE)**

(Case T-273/07)

(2007/C 235/23)

Language in which the application was lodged: Spanish

Parties

Applicant: Miguel Torres, SA (Barcelona, Spain) (represented by: E. Armijo Chávarri, M. Baz de San Ceferino and A. Castán Pérez-Gómez, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Vinícola de Tomelloso S.C.L.

Form of order sought

— annul the decision of the Second Board of Appeal of the OHIM of 2 May 2007 in case No R 610/2006-2 and order the OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Vinícola de Tomelloso S.C.L.

Community trade mark concerned: the word mark 'TORREGAZATE' (application No 3.134.665) for products in class 33 (wines, spirits and liqueurs).

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

Mark or sign cited in opposition: the various national word marks 'TORRES' for products in class 33 and other Community, international and national word and figurative marks which consist of or include the term 'TORRES' and cover the same products as the former.

Decision of the Opposition Division: opposition dismissed.

Decision of the Board of Appeal: appeal dismissed.

Pleas in law: incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark.

**Action brought on 18 July 2007 — Ebro Puleva v OHIM —
Berenguel (BRILLO'S)**

(Case T-275/07)

(2007/C 235/24)

Language in which the application was lodged: Spanish

Parties

Applicant: Ebro Puleva, SA (Madrid, Spain) (represented by: P. Casamitjana Lleónart, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Luis Berenguel, S.L.

Form of order sought

— annul the decision of the Second Board of Appeal of the OHIM of 21 May 2007 in case No R 493/2006-2 (concerning opposition proceedings No B 705 790).

Pleas in law and main arguments

Applicant for a Community trade mark: LUIS BERENGUEL, S.L.

Community trade mark concerned: the word mark 'BRILLO'S' for goods in classes 29, 30 and 31 (application No 2.984.995).

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

Mark or sign cited in opposition: the Spanish figurative mark 'brillante' (mark No 922.772) for products in class 30 and the Spanish figurative mark 'brillante' (mark No 2.413.459) for goods in class 29.

Decision of the Opposition Division: opposition dismissed.

Decision of the Board of Appeal: appeal dismissed.

Pleas in law: incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark ⁽¹⁾, inasmuch as it found that the signs in conflict are phonetically, conceptually and visually different.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 8(1), Article 73 and Article 74(1), *in fine*, of Regulation (EC) No 40/94 ⁽¹⁾.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 20 July 2007 — Secure Computing v OHIM — Investronica (SECUREOS)

(Case T-277/07)

(2007/C 235/25)

Language in which the application was lodged: German

Parties

Applicant: Secure Computing Corporation (Minnesota, United States) (represented by: H. P. Kunz-Hallstein and R. Kunz-Hallstein, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Investronica, SA

Form of order sought

- annul the decision of the First Board of Appeal of OHIM of 25 April 2007 in Case R 1063/2006-1;
- order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: The word mark 'SECUREOS' for goods in Class 9 (Application No 2 659 944).

Proprietor of the mark or sign cited in the opposition proceedings: Investronica, S.A.

Mark or sign cited in opposition: The word mark 'SECUREURO' (Community trade mark No 2 126 290) for goods and services in Classes 7, 9, 16, 35, 36, 37 and 42 and the figurative mark 'secureuro' (Community trade mark No 2 418 135) for goods and services in Classes 7, 9, 16, 35 and 36.

Decision of the Opposition Division: Grant of the opposition and rejection of the application.

Action brought on 18 July 2007 — Sepracor v OHIM — Laboratorios Ern (LEVENIA)

(Case T-280/07)

(2007/C 235/26)

Language in which the application was lodged: English

Parties

Applicant: Sepracor, Inc. (Malborough, United States) (represented by: E. De Gryse, E. Cornu, D. Moreau, lawyers)

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

Other party to the proceedings before the Board of Appeal: Laboratorios Ern, SA (Barcelona, Spain)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office of Harmonisation in the Internal Market of 18 April 2007 in Case R 155/2006-1;
- order the Office to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: Sepracor, Inc.

Community trade mark concerned: The Community word mark 'LEVENIA' for goods in class 5 — application No 2 563 799

Proprietor of the mark or sign cited in the opposition proceedings: Laboratorios Ern, SA

Mark or sign cited: The national word mark 'LEVELINA' for goods in classes 1 and 5

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Upheld the appeal