

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

20 January 2010 *

In Case T-460/07,

Nokia Oyj, established in Helsinki (Finland), represented by J. Tanhuanpää, lawyer,

applicant,

v

Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), represented by A. Folliard-Monguiral, acting as Agent,

defendant,

* Language of the case: Finnish.

the other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court, being

Medion AG, established in Essen (Germany), represented by P.-M. Weisse, lawyer,

ACTION brought against the decision of the Second Board of Appeal of OHIM of 2 October 2007 (Case R 141/2007-2), concerning opposition proceedings between Medion AG and Nokia Oyj,

THE GENERAL COURT (Eighth Chamber),

composed of M.E. Martins Ribeiro (Rapporteur), President, N. Wahl and A. Dittrich, Judges,

Registrar: E. Coulon,

having regard to the application lodged at the Registry of the Court on 18 December 2007,

having regard to the response of OHIM lodged at the Registry of the Court on 21 May 2008,

having regard to the response of the intervener lodged at the Registry of the Court on 7 May 2008,

having regard to the letters of 14, 22 and 23 April 2009 from the applicant, OHIM, and the intervener respectively, stating that they would not attend the hearing,

gives the following

Judgment

Facts

- 1 On 7 January 2004, the applicant, Nokia Oyj, filed an application for a Community trade mark at the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) pursuant to Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), as amended (replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p.1)).
- 2 Registration as a trade mark was sought for the word sign LIFE BLOG.
- 3 The goods and services in respect of which registration of the mark was sought are in classes 9, 38 and 41 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of 15 June

1957, as revised and amended, and correspond, for each of those classes, to the following description:

— class 9: ‘Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; devices for the recording, transmission and playback of sound and images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus’;

— class 38: ‘Telecommunications’;

— class 41: ‘Education; providing of training; entertainment; sporting and cultural activities.’

⁴ That application was published in *Community Trade Marks Bulletin* No 2/2005 of 10 January 2005.

⁵ On 4 April 2005 the intervener, Medion AG, lodged a notice of opposition against the mark applied for, claiming a likelihood of confusion within the meaning of Article 8(1)(b) of Regulation No 40/94 (now Article 8(1)(b) of Regulation No 207/2009).

- 6 The opposition was based on all the goods and services covered, in particular, by German registration No 39 849 644 in respect of the word mark LIFE, filed on 29 August 1998 and registered on 22 February 1999, for goods and services in classes 1, 7 to 11, 16, 21, 28, 37, 38, 41 and 42.

- 7 The opposition was directed against all the goods and services covered by the mark applied for, except for ‘fire-extinguishing apparatus’ in class 9 and ‘sporting and cultural activities’ in class 41.

- 8 By decision of 27 November 2006, the Opposition Division upheld the opposition on the ground that there was a likelihood of confusion on German territory with respect to all the goods and services with the exception of ‘lifesaving apparatus’ and ‘automatic vending machines and mechanisms for coin-operated apparatus’ in class 9 which were regarded as different products from the earlier trade mark.

- 9 On 18 January 2007, the applicant lodged an appeal against the Opposition Division’s decision.

- 10 By decision of 2 October 2007 (‘the contested decision’), the Second Board of Appeal rejected the application. After observing that the applicant had not put forward any argument capable of contradicting the finding that the goods and services covered by the mark applied for, in classes 9, 38 and 41, and those of the earlier mark were identical or similar, the Board of Appeal upheld the Opposition Division’s decision on that point. The Board of Appeal, as the Opposition Division had done, compared the mark applied for with one of the intervener’s earlier marks which had the broadest range and whose representation bore the closest resemblance to the applicant’s mark.

- 11 As regards the comparison of the signs at issue, the Board of Appeal held essentially, in paragraph 24 of the contested decision, that the word 'life' or its German equivalent 'Leben' could not be regarded as descriptive of the goods and services at issue. It added, in paragraph 25 of that decision, that it was unlikely that the relevant German public associates the English word 'life' with the concept of durability. As to the earlier mark being weakened on account of its supposed coexistence with a large number of similar marks, the Board of Appeal held, in paragraphs 27 and 28 of the contested decision, that that argument was not supported by extracts from OHIM's Community Trade Mark Register, since some of those had not yet been registered and others had been removed. Furthermore, the Board of Appeal stated, in paragraph 29 of that decision, that the Court of Justice, in the judgment in Case C-120/04 *Medion* [2005] ECR I-8551, had recognised that the word 'life' had a normal distinctive character.
- 12 As regards the word 'blog', the Board of Appeal, in paragraphs 31 and 33 of the contested decision, held that it was common ground that it is a shortened form of 'we-blog', designating a personal journal that is frequently updated on the internet, and upheld the findings of the Opposition Division that, for part of the goods and services concerned, which could include goods and services related to the internet, the word 'blog' was 'rather weak', as the average consumer of goods and services related to information technology would associate it with the characteristics of those goods and services.
- 13 As regards the other goods and services, the Board of Appeal held, in paragraph 33 of the contested decision, that the Court of Justice had determined, in relation to the same sign 'LIFE', and the sign 'THOMSON LIFE', that there was a likelihood of confusion. Since the Court arrived at that conclusion in circumstances where the element 'life' appeared in second position and in which the goods were also electrical goods, the 'strength' or 'weakness' of the word 'blog' would be unlikely to have much effect on the final outcome.

14 Finally, as regards the overall assessment of the marks, the Board of Appeal stated, in paragraphs 34 and 35 of the contested decision, that, in accordance with the judgment in *Medion*, cited in paragraph 11 above, there was a likelihood of confusion, since the word ‘life’ had an independent distinctive role in the sign applied for, without constituting the dominant element, and the German public would perceive the mark applied for as a sign economically linked to the earlier mark. According to the Board of Appeal, that finding is based primarily on the fact that the similarity or identical nature of the goods and services concerned would offset the obvious oral and visual difference between the marks, second, on the fact that the beginning of signs tend to attract the consumer’s attention and will therefore be memorised more easily and, third, on the fact that the concepts conveyed by the signs at issue partly overlap.

Forms of order sought by the parties

15 The applicant claims that the Court should:

— annul the contested decision;

— reject the opposition;

— refer the case back to OHIM for the registration of the mark applied for;

— order OHIM to pay the costs.

16 OHIM and the intervener contend that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Admissibility of the second and third heads of claim

Arguments of the parties

17 OHIM claims that the applicant's second and third heads of claim, namely those seeking the rejection of the opposition and the registration of the mark applied for, are inadmissible, since they seek the issuing of directions.

Findings of the Court

18 It must be recalled that, according to settled case-law, in an action before the Community Courts against the decision of a Board of Appeal of OHIM, the latter is, under

Article 63(6) of Regulation No 40/94 (now Article 65(6) of Regulation No 207/2009), to take the measures necessary to comply with that judgment. Accordingly, the Court is not entitled to issue directions to OHIM (Case T-331/99 *Mitsubishi HiTec Paper Bielefeld v OHIM (Giroform)* [2001] ECR II-433, paragraph 33, and judgment of 14 February 2008 in Case T-39/04 *Orsay v OHIM — Jiménez Arellano (O orsay)*, not published in the ECR, paragraph 15).

- 19 Therefore, the applicant's third head of claim requesting the Court to order OHIM to register the mark applied for must be rejected as inadmissible.
- 20 As regards the second head of claim, suffice it to say that it is necessary to examine it only if the claim for annulment of the contested decision is upheld.

Admissibility of the documents produced for the first time before the Court

Arguments of the parties

- 21 OHIM and the intervener claim that Annexes A1 to A4 to the application, which seek to establish the coexistence on the market of marks containing the word 'life', were never submitted during the administrative procedure before OHIM, so that they must be declared to be inadmissible.

Findings of the Court

- ²² It must be recalled that the purpose of the action before the Court is to review the legality of decisions of the Boards of Appeal of OHIM within the meaning of Article 63 of Regulation No 40/94. It is thus not the Court's function to re-evaluate the factual circumstances in the light of evidence adduced for the first time before it (Case T-10/03 *Koubi v OHIM - Flabesa (CONFORFLEX)* [2004] ECR II-719, paragraph 52, and Case T-336/03 *Éditions Albert René v OHIM (MOBILIX)* [2005] ECR II-4667, paragraphs 15 and 16).
- ²³ In that connection, it must be observed that in the proceedings before OHIM the applicant argued that the coexistence of the earlier marks was capable of proving the 'level of dilution' of the word 'life' (see paragraphs 11, 23 and 28 of the contested decision), so that it should have lodged those documents in support of those submissions before OHIM.
- ²⁴ It follows that Annexes A1 to A4, which seek to prove the coexistence on the market of marks containing the word 'life', and which were never submitted in the procedure before OHIM, must be declared inadmissible.

Admissibility of the arguments and evidence previously submitted to OHIM

Arguments of the parties

- ²⁵ OHIM states that the general reference made by the applicant in the application to documents lodged during the procedure before OHIM does not satisfy the requirements of Article 44(1)(c) of the Rules of Procedure of the Court. Therefore, the applicant's arguments concerning the degree of inherent distinctive character of the earlier mark and the differences between the marks at issue are inadmissible.

Findings of the Court

- ²⁶ It must be observed that under Article 44(1)(c) of the Rules of Procedure, the application initiating the proceedings must contain a summary of the pleas in law relied on. According to the case-law, that summary must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the action, if necessary without any other supporting information (Case T-127/02 *Concept v OHIM (ECA)* [2004] ECR II-1113, paragraph 17, and the case-law cited).
- ²⁷ Furthermore, whilst the body of the application may be supported and supplemented on specific points by references to extracts from documents annexed thereto, a general reference to other documents, even those annexed to the application, cannot make up for the absence of the essential arguments in law which, in accordance with the abovementioned provision, must appear in the application (*ECA*, cited in paragraph 26 above, at paragraph 18, and the case-law cited).

28 In the present case, as regards, first of all, the similarity and differences between the signs at issue, the applicant merely stated in the application (paragraph 29):

‘The applicant will not elaborate on the differences and similarities of the respective marks because they are obvious to anyone and have been thoroughly addressed in the proceedings already. Therefore, and in order to keep within the required maximum number of pages, the applicant refers to the arguments and evidence filed before OHIM and the Board of Appeal.’

29 Thus, the applicant identifies neither the specific points of the application that it wishes to supplement by this reference nor the documents in which its arguments are set out.

30 In those circumstances, it is not for the Court either to search in those documents and annexes for the arguments which the applicant could set out, or to examine them, as such arguments are inadmissible.

31 Secondly, as regards the arguments relating to the distinctive character of the earlier mark, it must be stated that, although the applicant referred, in paragraph 28 of the application, to the arguments and evidence submitted to OHIM, it set out, in particular in paragraphs 22 to 27 of the application, the arguments in support of the existence of a weak distinctive character of that mark. It is therefore on the basis of those arguments that the Court will examine the criticisms made of the contested decision.

32 However, for the same reasons as those set out in paragraphs 26 to 30 above, the Court cannot be required to examine ‘the arguments and evidence filed before OHIM and the Board of Appeal’ (paragraph 28 of the application), which were not identified or set out in the application.

The application for annulment of the contested decision

Arguments of the parties

- 33 The applicant raises a single plea alleging infringement of Article 8(1)(b) of Regulation No 40/94.
- 34 The applicant submits that the Board of Appeal erred by basing its decision on the judgment in *Medion*, cited in paragraph 11 above, since the cumulative conditions laid down by the Court of Justice are, it submits, absent in this case: the present case does not concern a mark combining an earlier mark with the name of an undertaking, the earlier mark does not have a normal distinctive character, and the earlier mark does not play an ‘independent role’ in the later mark. The applicant points out that, in the mark applied for, the word ‘blog’ is not the applicant’s company name.
- 35 The notion of ‘independent role’ of a mark means that the element which does not constitute the shared part of the marks at issue should also be capable of indicating the origin of the goods and services independently of the composite mark. By juxtaposing a new mark with the name of the company, the composite sign gives the impression that it relates to a certain range of goods from among that company’s goods and services. According to the applicant, the correct approach should have been, in accordance with the case-law of the General Court, to declare that, in order for a likelihood of confusion to exist, the element constituting the earlier mark was the dominant element in the mark applied for, which could not be the case with respect to the word ‘life’ in the latter, which is, it submits, less distinctive than the word ‘blog’.
- 36 Furthermore, the applicant argues, first, that, contrary to the finding of the Board of Appeal which took the view that the earlier mark had a normal distinctive character, that mark is a ‘weak mark’ and, second, that the Court of Justice, in the *Medion* judgment, could not make such a classification because the case was a reference for a

preliminary ruling. Furthermore, it states that it was for the Board of Appeal to assess the distinctive character of the earlier mark.

37 Finally, the applicant submits that the element constituting the earlier mark is a word very frequently used in the sector concerned and that it coexists on the markets with respect to the relevant goods and consumers.

38 OHIM and the intervener contend that that plea should be rejected.

Findings of the Court

39 Under Article 8(1)(b) of Regulation No 40/94, upon opposition by the proprietor of an earlier trade mark, the trade mark applied for is not to be registered where ‘because of its identity with or similarity to the earlier trade mark and the identity or similarity of the goods or services covered by the trade marks there exists a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected; the likelihood of confusion includes the likelihood of association with the earlier trade mark’.

40 In addition, under Article 8(2)(a)(ii) of Regulation No 40/94 (now Article 8(2)(a)(ii) of Regulation No 207/2009), earlier trade marks means marks registered in a Member State with a date of application for registration which is earlier than the date of application for registration of the Community trade mark.

- 41 According to settled case-law, the risk that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically-linked undertakings constitutes a likelihood of confusion (see judgment of 10 September 2008 in Case T-325/06 *Boston Scientific v OHIM - Terumo (CAPIO)* [2008], not published in the ECR, paragraph 70, and the case-law cited; see also, by analogy, Case C-39/97 *Canon* [1998] ECR I-5507, paragraph 29, and Case C-342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paragraph 17).
- 42 In addition, it is common ground that the likelihood of confusion on the part of the public must be assessed globally, taking into account all factors relevant to the circumstances of the case (see *CAPIO*, cited in paragraph 41 above, at paragraph 71, and the case-law cited; see, by analogy, Case C-251/95 *SABEL* [1997] ECR I-6191, paragraph 22, *Canon*, cited in paragraph 41 above, at paragraph 16, and *Lloyd Schuhfabrik Meyer*, cited in paragraph 41 above, at paragraph 18).
- 43 That global assessment entails a certain interdependence between the factors taken into account and, in particular, between the similarity of the trade marks and the similarity of the goods or services covered. Accordingly, a low degree of similarity between those goods or services may be offset by a high degree of similarity between the marks, and vice versa (Case C-234/06 P *Il Ponte Finanziaria v OHIM* [2007] ECR I-7333, paragraph 48, and Case T-6/01 *Matratzen Concord v OHIM - Hukla Germany (MATRATZEN)* [2002] ECR II-4335, paragraph 25; see also, by analogy, *Canon*, cited in paragraph 41 above, at paragraph 17). The interdependence of those factors is expressly referred to in the seventh recital in the preamble to Regulation No 40/94 (now recital 8 in the preamble to Regulation No 207/2009), according to which the concept of similarity is to be interpreted in relation to the likelihood of confusion, the assessment of which depends on numerous elements and, in particular, on the recognition of the trade mark on the market, the association which can be made with the used or registered sign, the degree of similarity between the mark and the sign and between the goods or services identified (see *CAPIO*, cited in paragraph 41 above, at paragraph 72 and the case-law cited).
- 44 Furthermore, the global assessment of the visual, aural or conceptual similarity of the signs at issue must be based on the overall impression given by the marks, bearing

in mind, in particular, their distinctive and dominant components. The wording of Article 8(1)(b) of Regulation No 40/94 — ‘there exists a likelihood of confusion on the part of the public’ — shows that the perception of marks in the mind of the average consumer of the type of goods or services in question plays a decisive role in the global assessment of the likelihood of confusion. The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (see *CAPIO*, cited in paragraph 41 above, at paragraph 73 and the case-law cited; see also, by analogy, *SABEL*, cited in paragraph 42 above, at paragraph 23).

- 45 For the purposes of the global assessment of the likelihood of confusion, the average consumer of the goods concerned is deemed to be reasonably well informed, and reasonably observant and circumspect. Furthermore, account should be taken of the fact that the average consumer only rarely has the chance to make a direct comparison between the different marks but must place his trust in the imperfect picture of them that he has kept in his mind. It should also be borne in mind that the average consumer’s level of attention is likely to vary according to the category of goods or services in question (Case T-104/01 *Oberhauser v OHIM - Petit Liberto (Fifties)* [2002] ECR II-4359, paragraph 28, and Case T-186/02 *BMI Bertollo v OHIM - Diesel (DIESELIT)* [2004] ECR II-1887, paragraph 38; see also, by analogy, *Lloyd Schuhfabrik Meyer*, cited in paragraph 41 above, at paragraph 26).
- 46 In this case, the earlier mark is a national mark registered in Germany, with respect to which the contested decision was adopted. Therefore, as the Board of Appeal rightly held in paragraph 21 of the contested decision, the examination must be limited to German territory.
- 47 It is also common ground that the relevant public is, as the Board of Appeal also rightly held in paragraph 21 of the contested decision, constituted by the average German consumer who is deemed to be reasonably well informed, and reasonably observant and circumspect. However, as some of those products may be expensive items, the public will necessarily pay more attention. Those findings, which were not challenged by the parties, must be upheld.

- 48 It is in the light of the foregoing considerations that the Board of Appeal's assessment of the likelihood of confusion between the signs in dispute must be examined.

The similarity of the goods and services

- 49 In this connection, it suffices to state that the position adopted by the Board of Appeal, in paragraph 18 of the contested decision, which refers to the Opposition Division's analysis, must be approved, since the applicant has not made any criticism of the contested decision as regards the identity or similarity of the goods and services concerned.

The similarity of the signs

- 50 As has already been stated in paragraph 44 above, the global assessment of the likelihood of confusion must, as regards the visual, aural or conceptual similarity of the marks in question, be based on the overall impression which they create, bearing in mind, in particular, their distinctive and dominant components (see Case T-292/01 *Phillips-Van Heusen v OHIM - Pash Textilvertrieb und Einzelhandel (BASS)* [2003] ECR II-4335, paragraph 47, and *CAPIO*, paragraph 41 above, at paragraph 88 and the case-law cited; see, by analogy, *SABEL*, cited in paragraph 42 above, at paragraph 23).
- 51 It is also clear from the case-law that two marks are similar where, from the point of view of the relevant public, they are at least in part identical as regards one or more relevant aspects (*MATRATZEN*, cited in paragraph 43 above, at paragraph 30, and *CAPIO*, cited in paragraph 41 above, at paragraph 89; see also, by analogy, *SABEL*, cited in paragraph 42 above, at paragraph 23).

- 52 The Board of Appeal held, in paragraph 36 of the contested decision, that, on the basis on a global assessment, the marks at issue were similar. That assessment must be upheld.
- 53 In that connection, it must be pointed out that the signs to be compared are LIFE and LIFE BLOG.
- 54 First, as regards the visual comparison, it must be stated that the mark applied for is composed of two words, written in capitals, of eight letters. The earlier mark is composed of a single word, also written in capitals, of four letters. However, those differences are offset by the fact that the word 'life' is common to both signs and is the faithful reproduction of the earlier mark.
- 55 Visually, there is a degree of similarity between the marks at issue because the earlier trade mark is the first component of the mark applied for. Furthermore, since the two marks are word marks, they are both written in a non-stylised way for the purposes of any assessment of their visual similarity. Thus, the average consumer, who must normally rely on his imperfect mental image of the trade marks, could confuse the marks in question from a visual perspective (see, to that effect, Case T-22/04 *Reemark v OHIM - Bluenet (Westlife)* [2005] ECR II-1559, paragraph 34).
- 56 Second, as regards the aural comparison, it must be observed that the mark applied for consists of two words and the earlier mark of one. Therefore, the two signs are pronounced differently. However, on account of the fact that the first word of the mark applied for and the only word of the earlier mark are identical and are pronounced in the same way, there is a degree of aural similarity between the two signs taken in their entirety (judgment of 27 September 2007 in Case T-418/03 *La Mer Technology v OHIM — Laboratoires Goëmar (LA MER)* [2007], not published in the ECR, paragraph 123).

- 57 Third, as regards the conceptual comparison, it must be stated that, as far as the word 'life' is concerned, the latter is an English word in everyday usage which may be easily understood by the average German-speaking public. Associated with all the goods and services concerned, the word 'life' refers to the concept of life rather than to a specific lifespan of those goods and services. The same conceptual content is found in the mark applied for, which refers, at least for those who understand the meaning of the word 'blog', to a personal online diary.
- 58 It must be held, as OHIM has observed, that the additional concept 'blog' which is attached to the mark applied for is not able to supplant the reference to the concept of life which is common to both signs, which cannot be regarded as being of little or no importance, so that there is a degree of conceptual similarity between the signs at issue.

The likelihood of confusion

- 59 It should be borne in mind that a likelihood of confusion exists if, cumulatively, the degree of similarity between the trade marks in question and the degree of similarity between the goods or services covered by those marks are sufficiently high (*MATRATZEN*, cited in paragraph 43 above, at paragraph 45).
- 60 In that connection, even if it is true that consumers normally attach more importance to the beginning of words since they are more pronounced (see, to that effect, judgment of 27 February 2008 in Case T-325/04 *Citigroup v OHIM — Link Interchange Network (WORLDLINK)*, not published in the ECR [2008], paragraph 82), it must be stated that neither of the two elements 'life' or 'blog' emerges clearly as the dominant element of the mark applied for in this instance. In that regard, it would be artificial to consider 'life' to be dominant because it is the first element of the mark applied for, but nor is there any reason to regard the 'blog' element as dominant (see, to that effect, *Westlife*, cited in paragraph 55 above, at paragraph 36).

- 61 Furthermore, it must be added, first, that it cannot reasonably be argued that the word 'life' is in any way descriptive of the goods and services referred to.
- 62 Second, as regards 'blog', a distinction must be made according to the goods and services concerned. Applied to IT or telecommunications goods or services, 'blog' must be considered as having a limited distinctive character since, by reference to that area, that word is usually understood, even by the average German consumer of those goods or services, as referring to an online diary (weblog). In that category, the word 'life' has a greater distinctive character than the word 'blog'.
- 63 However, as regards all the other goods or services which do not imply an IT or telecommunications element, and in regard to which the word 'blog' has no meaning, it must be held that neither of the two elements 'life' or 'blog' emerges clearly as the element with the most distinctive character. However, as OHIM has rightly observed, the greater degree of inherent distinctiveness of 'blog' will, assuming it is established, be somewhat offset by the fact that 'life' is at the beginning of the sign, as the public's attention is usually concentrated on the beginning of the sign applied for.
- 64 In this case, it has already been held in paragraph 49 above that the goods and services concerned are partly identical and partly similar. Furthermore, having regard to the findings set out in paragraphs 60 to 63 above, the overall impression made by the signs at issue is liable to create, between them, a similarity sufficient to give rise to a likelihood of confusion on the part of the consumer. Moreover, even assuming

that the relevant public, including the public which shows a higher level of attention, may distinguish the signs at issue, it could nevertheless, as OHIM states, be led to believe that the marks come from the same undertaking or, as the case may be, from economically-linked undertakings, identified by the word 'life'.

- ⁶⁵ As is apparent from paragraph 60 above, there is no ground for the assertion that, in this case, 'life' is less prominent than 'blog' in the mark applied for. It appears, in this case, that the difference between the two signs at issue as regards the last word of the mark applied for is insufficient to offset the similarity established between one of the two elements of the mark applied for and the single element of which the earlier mark is composed.
- ⁶⁶ Furthermore, it must be recalled that, in this case, although there is a real conceptual difference between the signs, it cannot be regarded as making it possible to neutralise the visual and aural similarities previously established (see, to that effect, Case C-16/06 P *Éditions Albert René* [2008] ECR I-10053, paragraph 98).
- ⁶⁷ Finally, the applicant has not been able to prove that the distinctive character of the earlier mark has been reduced, since evidence of the coexistence of marks containing the word 'life' was not adduced.
- ⁶⁸ Admittedly, the possibility cannot be entirely excluded that, in certain cases, the coexistence of earlier marks on the market could reduce the likelihood of confusion which the Opposition Division and the Board of Appeal find exists as between two marks at issue. However, that possibility can be taken into consideration only if, at

the very least, during the proceedings before OHIM concerning relative grounds of refusal, the applicant for the Community trade mark duly demonstrated that such coexistence was based upon the absence of any likelihood of confusion on the part of the relevant public between the earlier marks upon which it relies and the intervener's earlier mark on which the opposition is based, and provided that the earlier marks concerned and the marks at issue are identical (see judgment of 7 November 2007 in Case T-57/06 *NV Marly v OHIM — Erdal (Top iX)*, not published in the ECR [2007], paragraph 97, and the case-law cited).

⁶⁹ In this case, however, evidence that registrations coexisting on the market were identical has not been adduced, as the Board of Appeal rightly held in paragraph 28 of the contested decision. Furthermore, the applicant has not, in any event, shown that that coexistence was based on the absence of a likelihood of confusion (Case T-31/03 *Grupo Sada v OHIM - Sadia (GRUPO SADA)* [2005] ECR II-1667, paragraph 87).

⁷⁰ Furthermore, it must be recalled that, even in a case involving an earlier mark of weak distinctive character, on the one hand, and a trade mark applied for which is not a complete reproduction of it, on the other, there may be a likelihood of confusion, on account, in particular, of a similarity between the signs and between the goods or services covered (order of the Court of Justice of 27 April 2006 in Case C-235/05 P *L'Oréal v OHIM*, not published in the ECR [2006], paragraph 53).

⁷¹ It follows that, considered cumulatively, the degree of similarity between the trade marks in question and that between the goods and services covered by them are

sufficiently high. The Board of Appeal was therefore fully entitled to hold that with respect to the relevant public there was a likelihood of confusion between the signs at issue.

⁷² Therefore, in the light of the finding of the Board of Appeal in paragraph 34 of the contested decision, and without there being any need to consider the relevance of the fact that the Board of Appeal based its decision, in particular, on the judgment in *Medion*, on the ground that the element ‘blog’ was not a trade mark or a name of a well-known company, it must be held that the examination carried out by the Board of Appeal of the likelihood of confusion having regard to the similarity of the goods and services and the signs at issue must be upheld.

⁷³ In addition, according to the case-law, when a composite mark consists of one component juxtaposed to another trade mark, that latter mark, even where it is not the dominant component in the composite mark, may still have an independent distinctive role in the composite mark. In such a case, the composite mark and the other mark can be regarded as similar (Case T-212/07 *Harman International Industries v OHIM - Becker (Barbara Becker)* [2008] ECR II-3431, paragraph 37; see also *Medion*, paragraphs 30 and 37). In this case, having regard to all the above considerations, the ‘life’ element retains an independent distinctive role in the mark applied for.

⁷⁴ Therefore, the single plea alleging infringement of Article 8(1)(b) of Regulation No 40/94 must be dismissed as unfounded, together with the application in its entirety, without there being any need to rule on the admissibility of the applicant’s second head of claim asking the Court to dismiss the intervener’s opposition (see, to that effect, Case T-205/06 *NewSoft Technology v OHIM — Soft (Presto! Bizcard Reader)*, not published in the ECR [2008], paragraph 70).

Costs

⁷⁵ Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicant has been unsuccessful, it must be ordered to pay the costs in accordance with the form of order sought by OHIM and the intervener.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. Dismisses the action

2. Orders Nokia Oyj to pay the costs.

Martins Ribeiro

Wahl

Dittrich

Delivered in open court in Luxembourg on 20 January 2010.

[Signatures]