



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

13 June 2012 *

(Community trade mark — Opposition proceedings — Application for the Community word mark HELLIM — Earlier Community collective word mark HALLOUMI — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Right to be heard — Article 63(2) of Regulation No 207/2009)

In Case T-534/10,

Organismos Kypriakis Galaktokomikis Viomichanias, established in Nicosia (Cyprus), represented initially by C. Milbradt and H. Van Volxem, and subsequently by C. Milbradt and A. Schwarz, lawyers,

applicant,

v

Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), represented by G. Schneider, acting as Agent,

defendant,

the other party to the proceedings before the Board of Appeal of OHIM being

Garmo AG, established in Stuttgart (Germany),

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 20 September 2010 (Case R 794/2010-4), concerning opposition proceedings between Organismos Kypriakis Galaktokomikis Viomichanias and Garmo AG,

THE GENERAL COURT (Eighth Chamber),

composed of L. Truchot, President, M.E. Martins Ribeiro (Rapporteur) and H. Kanninen, Judges,

Registrar: J. Weychert, Administrator,

having regard to the application lodged at the Registry of the General Court on 22 November 2010,

having regard to the response lodged at the Court Registry on 21 March 2011,

having regard to the decision of 15 April 2011 refusing leave to lodge a reply,

further to the hearing on 16 November 2011,

* Language of the case: German.

gives the following

Judgment

Background to the dispute

- 1 On 24 October 2005, Garmo AG filed an application for registration of 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 The mark in respect of which registration was sought is the word sign HELLIM.
- 3 The goods in respect of which registration was sought are in Class 29 of the Nice Agreement of 15 June 1957 concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, as revised and amended, and correspond in particular to the following description: ‘Milk and milk products’.
- 4 The application for a Community trade mark was published in *Community Trade Marks Bulletin* No 14/2006 of 3 April 2006.
- 5 On 26 June 2006, the applicant, Organismos Kypriakis Galaktokomikis Viomichanias, filed a notice of opposition, under Article 42 of Regulation No 40/94 (now Article 41 of Regulation No 207/2009), against registration of the mark applied for in respect of the goods referred to in paragraph 3 above.
- 6 The opposition was based on the earlier Community collective word mark HALLOUMI, applied for on 22 February 1999 and registered on 14 July 2000, under number 1082965, covering goods in Class 29 and corresponding to the following description: ‘Cheese’.
- 7 The ground relied on in support of the opposition was that referred to in Article 8(1)(b) of Regulation No 40/94 (now Article 8(1)(b) of Regulation No 207/2009).
- 8 By decision of 10 March 2010, the Opposition Division dismissed the opposition on the ground that, notwithstanding the fact that the goods concerned were identical or similar, there was no likelihood of confusion between the signs HELLIM and HALLOUMI. The Opposition Division found that the signs at issue were not visually or phonetically similar. Conceptually, the signs at issue had a certain similarity for consumers, given that the two terms were used to designate a specialty cheese. In addition, the earlier mark had weak distinctive character in Cyprus since the term ‘halloumi’ designates a specialty cheese from Cyprus. On account of that weak distinctive character of the earlier mark, the conceptual similarity could not offset the visual and phonetic differences between the signs at issue, with the result that there was no likelihood of confusion.
- 9 On 7 May 2010, the applicant filed a notice of appeal at OHIM, pursuant to Articles 58 to 64 of Regulation No 207/2009, against the decision of the Opposition Division.
- 10 By decision of 20 September 2010 (‘the contested decision’), the Fourth Board of Appeal of OHIM dismissed the appeal. First, in paragraph 18 of the contested decision, the Board of Appeal concurred with the findings of the Opposition Division, which were not challenged by the parties, that the goods concerned were identical or similar. Second, the Board of Appeal held, in paragraphs 21 and 22 of the contested decision, that, visually and phonetically, there was a low degree of similarity between the signs at issue. Conceptually, it held, in paragraph 23 of the contested decision, that Turkish was not

an official language of the European Union ('EU'), with the result that the possible meaning of the word 'hellim' in Turkish was not decisive in assessing the likelihood of confusion. Moreover, even if the public were to recognise the designation of a specialty cheese from Cyprus, this would have no impact since it had a purely descriptive meaning and could not be used as a basis for comparison of the signs. The conceptual comparison was therefore neutral. Third, so far as concerns the likelihood of confusion, the Board of Appeal found, in paragraph 26 of the contested decision, that the fact that the earlier mark was a collective mark did not necessarily mean that it had an average degree of distinctive character. The Board of Appeal observed that the collective mark could be distinguished from the individual mark by the fact that the ground for refusal relating to a descriptive geographical indication was not applicable to it, since the collective mark distinguished the goods which it covered according to the fact that they originated from a group of regional producers. Given that the earlier mark had weak distinctive character, as well as in the light of the low degree of visual and phonetic similarity between the signs at issue, the Board of Appeal concluded, in paragraph 30 of the contested decision, that there was no likelihood of confusion, even though the goods concerned were identical and similar.

Forms of order sought

11 The applicant claims that the Court should:

- annul the contested decision;
- order OHIM to pay the costs, including those incurred in the proceedings before the Board of Appeal.

12 OHIM contends that Court should:

- dismiss the action;
- order the applicant to pay the costs.

Law

13 In support of its action, the applicant relies on two pleas in law. The first plea alleges breach of Article 8(1)(b) of Regulation No 207/2009 on the ground that there is a likelihood of confusion. The second plea alleges breach of Article 63(2) of that regulation on the ground that the applicant's right to be heard was not respected.

The first plea in law, alleging breach of Article 8(1)(b) of Regulation No 207/2009

14 In particular, the applicant criticises the Board of Appeal on the ground that it found, on the one hand, that the signs at issue had a low degree of visual and phonetic similarity and, on the other, that the conceptual comparison was neutral.

15 In the words of Article 8(1)(b) of Regulation No 207/2009, upon opposition by the proprietor of an earlier trade mark, the trade mark applied for is not to be registered if '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'.

16 It is settled case-law that the risk that the public might believe that the goods or services in question are 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), 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).

- 17 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 above in paragraph 16, paragraph 71 and the case-law cited; see, by analogy, Case C-251/95 *SABEL* [1997] ECR I-6191, paragraph 22; *Canon*, cited above in paragraph 16, paragraph 16; and *Lloyd Schuhfabrik Meyer*, cited above in paragraph 16, paragraph 18).
- 18 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. Thus, 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 above in paragraph 16, paragraph 17). The interdependence of those factors is expressly referred to in 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 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 above in paragraph 16, paragraph 72 and the case-law cited).
- 19 Moreover, the more distinctive the earlier mark, the greater will be the likelihood of confusion, and therefore marks with a highly distinctive character, either per se or because of the recognition that they possess on the market, enjoy broader protection than marks with a less distinctive character (see *Lloyd Schuhfabrik Meyer*, cited above in paragraph 16, paragraph 20 and the case-law cited).
- 20 It thus follows, for the purposes of Article 8(1)(b) of Regulation No 207/2009, that there may be a likelihood of confusion, notwithstanding a lesser degree of similarity between the trade marks, where the goods or services covered by them are very similar and the earlier mark is highly distinctive (see *Lloyd Schuhfabrik Meyer*, cited above in paragraph 16, paragraph 21 and the case-law cited).
- 21 Lastly, it must be borne in mind that, 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 above in paragraph 16, paragraph 26).
- 22 In the present case, the Board of Appeal acted correctly in concluding, in paragraph 17 of the contested decision, without this being challenged by the applicant, that the relevant public is made up of the general public of the European Union since, on the one hand, the goods in question are everyday foodstuffs and, on the other, the earlier mark is a Community mark.

Comparison of the signs

- 23 In the first place, as regards the visual similarity, it must be held, as stated in paragraph 21 of the contested decision, that the signs at issue both begin with the same letter, that is to say 'h', and share the combination of letters 'll', as well as both containing, at the end of the word, the letters 'i' and 'm', albeit in different orders, that is to say, 'mi' and 'im'. Visually, however, the differences in the respective structures of the words, the difference in the vowels used, the arrangement of the letters and their

length mean that, overall, the signs at issue are not visually similar, as the Opposition Division had, moreover, already found (see, to that effect, Case T-224/01 *Durferrit v OHIM - Kolene (NU-TRIDE)* [2003] ECR II-1589, paragraph 46).

- 24 In that regard, the applicant's argument that there is an average degree of visual similarity on the ground that five of the six letters of the mark applied for also feature in the earlier mark, that is to say, 'h', 'i' and 'm' as well as the combination 'll', cannot be accepted, given the need for an overall assessment of the various components of the signs at issue, in particular their composition and length and the arrangement of the letters that comprise those signs.
- 25 In the second place, so far as concerns the phonetic similarity, it is true, as the Board of Appeal stated in paragraph 22 of the contested decision, that the mark applied for consists of two syllables, whereas the earlier mark consists of three. In addition, the sounds of the respective syllables of the signs at issue are different. With the exception of the first syllables of the signs at issue, that is to say, 'he' and 'ha', which may be similar to a certain degree, the remaining parts of those signs are, in view of the different vowels used, the arrangement and number of constituent letters, very different, with the result that, overall, the signs at issue are not phonetically similar, as already found by the Opposition Division (see, to that effect, *NU-TRIDE*, cited above in paragraph 23, paragraph 47).
- 26 In that regard, the applicant added, at the hearing, that the Board of Appeal's examination had been carried out incorrectly since, according to the applicant, the word 'hellim' is pronounced by part of the relevant public as 'hellimi'. The public in Cyprus, it submits, tends to add a vowel to the ending of words which do not end in a vowel. It follows, in its view, that there is an average degree of phonetic similarity.
- 27 OHIM claims that that fact was not raised during the administrative procedure and constitutes a new argument.
- 28 It must be noted that, under Article 76(1) of Regulation No 207/2009, in proceedings relating to relative grounds for refusal of registration, the examination is to be restricted to the facts, evidence and arguments provided by the parties and the relief sought. It follows that, in relation to a relative ground for refusal of registration, elements of law and of fact which are pleaded before the Court without having previously been raised before the Board of Appeal cannot affect the legality of a decision of that Board (Case C-29/05 P *OHIM v Kaul* [2007] ECR I-2213, paragraph 54; Case T-169/02 *Cervecería Modelo v OHIM - Modelo Continente Hipermercados (NEGRA MODELO)* [2005] ECR II-505, paragraph 22; and Case T-63/07 *Mäurer + Wirtz v OHIM - Exportaciones Aceiteras Fedeoliva (tosca de FEDEOLIVA)* [2010] ECR II-957, paragraph 22).
- 29 It follows that, in the context of the review of legality of decisions of the Boards of Appeal, for which the General Court has jurisdiction under Article 65 of Regulation No 207/2009, elements of law and of fact which are pleaded before the Court without having previously been raised before the departments of OHIM cannot be examined for the purpose of assessing the legality of the decision of the Board of Appeal and must for that reason be declared inadmissible (*NEGRA MODELO*, cited above in paragraph 28, paragraphs 22 and 23, and *tosca de FEDEOLIVA*, cited above in paragraph 28, paragraph 23).
- 30 It is not apparent from the OHIM file that the applicant raised, in the course of the administrative proceedings, the submission that the Cypriot public pronounces the word 'hellim' by adding an 'i' to the end of it. In addition, even though the Opposition Division had found, in contrast to the Board of Appeal, that there was no phonetic similarity between the signs at issue, it would have been for the applicant to assert, in the course of its appeal before the Board of Appeal, that the mark applied for could be pronounced 'hellimi'; this, however, it failed to do.
- 31 It follows that, in accordance with the case-law referred to in paragraphs 28 and 29 above, the argument raised by the applicant at the stage of the oral procedure must be rejected as inadmissible.

- 32 Furthermore, it must be held that the applicant has failed entirely to adduce tangible evidence to support its claim that the word ‘hellim’ is pronounced as ‘hellimi’ by the Cypriot public.
- 33 In any event, even if the applicant were assumed to be entitled to raise that argument at the stage of the application, as it claims to have done, it must be noted that its application is, on that specific point, worded as follows: ‘Furthermore, the question may be raised as to the language on which the Board of Appeal based its conclusion that the series of vowels in “Hellim” has a clearer sound than that of “Halloumi”. In English, the pronunciation of the letter “a” is similar to that of the letter “e”, a fact which strengthens significantly the phonetic similarity.’
- 34 Contrary to the applicant’s claims at the hearing, it is in no way clear from that wording that the applicant relied on the alleged pronunciation of the word ‘hellimi’ by the Cypriot public.
- 35 In addition, it must be held that, if the applicant had intended to rely on that alleged pronunciation by the Cypriot public before the Court, it would necessarily have placed in question the Board of Appeal’s finding, in paragraph 22 of the contested decision concerning the examination of the phonetic similarity, that the earlier mark consisted of three syllables and the mark applied for consisted of two, in so far as, in contrast to the word ‘hellim’, the word ‘hellimi’ would consist of three syllables, that is to say ‘hel’, ‘li’ and ‘mi’. However, the applicant did not challenge that finding in its application either.
- 36 In the third place, as regards conceptual similarity, the Board of Appeal took the view, in paragraph 23 of the contested decision, that the conceptual comparison was neutral. In that regard, it found, first of all, that Turkish is not an official language of the EU, with the result that the possible meaning of the word ‘hellim’ in Turkish is not conclusive for purposes of assessing the likelihood of confusion. The Board of Appeal then went on to find that, even if the public were to recognise the designation of a specialty cheese from Cyprus, this would not have any greater impact on the assessment of the similarity of the signs since that is a purely descriptive meaning and cannot be used as a basis for comparison of the signs.
- 37 That analysis cannot be endorsed.
- 38 As OHIM, moreover, acknowledges in its response, while Turkish is not an official language of the EU, it is, none the less, common ground that it is one of the official languages of the Republic of Cyprus. The conclusion must therefore be drawn that Turkish is understood and spoken by part of the population of Cyprus.
- 39 With regard to conceptual similarity, what must be taken into consideration is the point of view of consumers within EU territory for whom the two words have a meaning.
- 40 However, so far as concerns the analysis of the specific meaning of the words that comprise the signs at issue, it must be found that a conceptual comparison cannot be neutral since the signs have a precise meaning in the language of the relevant public (see, *a contrario*, Case T-388/00 *Institut für Lernsysteme v OHIM - Educational Services (ELS)* [2002] ECR II-4301, paragraph 74).
- 41 In the present case, it is common ground that, conceptually, the Turkish translation of the Greek word ‘halloumi’ is ‘hellim’. From that perspective, it cannot be disputed that the average consumer in Cyprus, where both Greek and Turkish are official languages, will understand that the words ‘halloumi’ or ‘hellim’ both refer to the same specialty cheese from Cyprus (see, to that effect, Case T-33/03 *Osotspa v OHIM - Distribution & Marketing (Hai)* [2005] ECR II-763, paragraph 51, and, with regard to the collective mark Rioja and the mark Riojavina, which was the subject of the application, Case T-138/09 *Muñoz Arraiza v OHIM - Consejo Regulador de la Denominación de Origen Calificada Rioja (RIOJAVINA)* [2010] ECR II-2317, paragraph 52).
- 42 Consequently, there is some conceptual similarity, which depends on prior translation (see, to that effect, *Hai*, cited above in paragraph 41, paragraph 53).

- 43 It is therefore necessary to ascertain whether, as the Board of Appeal found in the contested decision, there is no likelihood of confusion between the signs at issue.

The likelihood of confusion

- 44 On the one hand, according to settled case-law, the more distinctive the earlier mark, the greater will be the likelihood of confusion. It is therefore not impossible that the conceptual similarity resulting from the fact that two marks use signs with analogous semantic content may give rise to a likelihood of confusion where the earlier mark has a particularly distinctive character, either per se or because it is well known on the market (see *Hai*, cited above in paragraph 41, paragraph 56 and the case-law cited; see, also, *SABEL*, cited above in paragraph 17, paragraph 24; and Case T-10/03 *Koubi v OHIM - Flabesa (CONFORFLEX)* [2004] ECR II-719, paragraph 50).
- 45 On the other hand, according to that same line of case-law, where the earlier mark is not especially well known to the public and consists of an image with little imaginative content, the mere fact that the two marks are conceptually similar will not be sufficient to give rise to a likelihood of confusion (*SABEL*, cited above in paragraph 17, paragraph 25, and *Hai*, cited above in paragraph 41, paragraph 55).
- 46 In paragraphs 25 to 27 of the contested decision, the Board of Appeal found, in essence, that the distinctive character of the earlier mark was diluted by the descriptive meaning of the word ‘halloumi’, with the result that the earlier mark described the product in question, that is to say, cheese. That sign describes, according to paragraph 27 of the contested decision, ‘the nature and type of cheese thus designated and not its geographical origin or other characteristics marked by regional particularities’.
- 47 The applicant claims, on the contrary, that sufficient account was not taken of the particularities resulting from the fact that the earlier mark is a collective mark, which indicates not only that the cheese originates from certain undertakings, that is to say, the members of the applicant, but also and necessarily that that cheese has a geographical origin (specific place of production, special recipe based on milk from Cyprus). The specific characteristics of the collective mark, the application for which is privileged under Article 66(2) of Regulation No 207/2009, cannot therefore adversely affect the applicant or imply that the distinctive character of that mark has been diluted, but must rather lead to the conclusion that the mark has at least average distinctive character.
- 48 That argument cannot be upheld.
- 49 It should be noted at the outset that Article 66(2) of Regulation No 207/2009, providing for a derogation from the ground for refusal set out in Article 7(1)(c) of that regulation, must be interpreted strictly (Case T-341/09 *Consejo Regulador de la Denominación de Origen Txakoli de Álava and Others v OHIM (TXAKOLI)* [2011] ECR II-2373, paragraph 35).
- 50 As OHIM correctly points out, whilst it is true that Article 66(2) of Regulation No 207/2009 allows registration of collective marks, notwithstanding the fact that they could fall within the scope of Article 7(1)(c) of that regulation, the second sentence of Article 66(2) states expressly that a collective mark cannot entitle the proprietor to prohibit a third party from using, in the course of trade, such signs or indications, on condition that that third party uses them in accordance with honest practices in industrial or commercial matters; in particular, such a mark may not be invoked against a third party who is entitled to use a geographical name.
- 51 It follows that, in the light of the need for a strict interpretation of Article 66(2) of Regulation No 207/2009, it is only at the stage of registration that the conditions under which a mark is acquired have been relaxed, in so far as descriptive marks may, by way of derogation from the conditions set out in Article 7(1)(c) of Regulation No 207/2009, be registered.

- 52 Contrary to the applicant's submissions, registration as a collective mark cannot therefore, per se, give rise to a presumption that the mark has average distinctive character, with the result that the Board of Appeal acted correctly in finding that the distinctive character of the earlier mark had to be regarded as being weak.
- 53 In that regard, it must be borne in mind that, even in a case involving an earlier mark of weak distinctive character, there may be a likelihood of confusion on account, in particular, of the identity of the goods in question and of the similarity between the signs at issue (see judgment of 13 April 2011 in Case T-358/09 *Sociedad Agricola Requingua v OHIM — Consejo Regulador de la Denominación de Origen Toro (TORO DE PIEDRA)*, not published in the ECR, paragraph 45 and the case-law cited).
- 54 However, it must be held that, in the light of the fact that there are no phonetic or visual similarities between the signs at issue, notwithstanding the identity or similarity of the goods concerned, there cannot be any likelihood of confusion on the part of the target public since the existence of a conceptual similarity between the signs at issue is not, in the case of an earlier descriptive mark, sufficient to give rise to a presumption of such a likelihood of confusion.
- 55 In the present case, notwithstanding the identity or similarity of the goods in question, given the fact that the earlier mark does not have a particularly distinctive character, and in view of its descriptive character, the mere conceptual similarity is not sufficient to give rise to a likelihood of confusion.
- 56 It follows from all of the foregoing that the Board of Appeal acted correctly in concluding that there was no likelihood of confusion between the mark applied for and the earlier mark under Article 8(1)(b) of Regulation No 207/2009. Consequently, the first plea in law must be rejected.

The second plea in law, alleging breach of Article 63(2) of Regulation No 207/2009

- 57 The applicant claims that, by failing to take account of its reply of 20 September 2010, lodged on the same day as that on which the contested decision was adopted, the Board of Appeal breached Article 63(2) of Regulation No 207/2009 on the ground that the applicant's right to be heard was not respected.
- 58 It must be noted that the applicant did not mention, in its application, the arguments that it claims to have put forward in its reply to the Board of Appeal to counter the arguments raised by Garmo concerning conceptual similarity and to which the Board of Appeal allegedly did not respond, even though it ought to have done so.
- 59 It was in response to a question raised by the Court at the hearing that the applicant stated that it had not had an opportunity to set out its views on the issue of conceptual similarity, referring also to the question whether the conceptual comparison was neutral. As was noted in the minutes of the hearing, the applicant stated that the Board of Appeal did not respond to paragraph 3 of its reply submitted to the Board of Appeal entitled 'With regard to conceptual similarity' and which contained reasoning as to whether there was conceptual similarity.
- 60 It must be noted that, in paragraph 3 of the applicant's reply lodged before the Board of Appeal, the applicant stated that it took issue with the description put forward by Garmo concerning the political situation in Cyprus. It pointed out that, while the northern area of Cyprus is occupied by Turkey, the whole of that territory is part of the EU and that the Greek- and Turkish-speaking communities are even less isolated from one another as the demarcation zone is crossed by millions of Greek or Turkish Cypriots. From this the applicant deduced that those Cypriots know that the terms 'halloumi' and 'hellim' designate one and the same product, that is to say, the national cheese of Cyprus.
- 61 In this regard, it must be stated, immediately, that the Court has, in paragraphs 36 to 42 above, held that the Board of Appeal erred in taking the view that the conceptual similarity between the signs at issue was neutral.

- 62 Moreover, and in any event, it is clear from paragraph 60 above that paragraph 3 of the applicant's reply before the Board of Appeal does not contain any argument relating to the issue of whether the conceptual comparison of the signs at issue was neutral.
- 63 It follows from the foregoing that the second plea in law must be rejected and the action dismissed in its entirety.

Costs

- 64 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.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders Organismos Kypriakis Galaktokomikis Viomichanias to pay the costs.**

Truchot

Martins Ribeiro

Kanninen

Delivered in open court in Luxembourg on 13 June 2012.

[Signatures]