

OHIM PRACTICE

Enter into force of the Treaty of Lisbon

The Treaty of Lisbon came into force on December 1, 2009. This resulted in important changes in the terminology for the court system. The entire European Union court system is now known as the Court of Justice of the European Union. The former European Court of Justice (ECJ) has been renamed the Court of Justice, and the former Court of First Instance (CFI) has been renamed the General Court.

Legitimate interest not required for filing invalidity action

By its decision of February 25, 2010, the European Court of Justice confirmed the General Court's decision in Case [C-408/08 \(Lancôme parfums et beauté & Cie SNC / OHMI-CMS Hasche Sigle\)](#) in which the Court held that for an application for invalidity before the OHIM to be valid, it was not necessary for the applicant to demonstrate a legitimate interest. In this case, the invalidity action had been filed in the name of a law firm.

This decision is founded on Article 56(1)(1) of Regulation No. 207/2009, which states that an application for revocation or for declaration of invalidity may be filed before the OHIM in the cases defined by Articles 50 and 51 by any natural or legal person as well as by any group or body set up for the purpose of representing the interest of manufacturers, producers, suppliers of services, traders or consumers, which under the terms of the law governing it has the capacity in its own name to sue and to be sued, without establishing any further requirements.

CASE LAW

RELATIVE GROUNDS FOR REFUSAL

There is no risk of confusion between:



CTM Application




Prior registrations

In its recent decision of March 4, 2010 in [Case T-24/08 \(Weldebräu GmbH & Co. KG/OHIM-Kofola Holding a.s.\)](#), the Court confirmed the Boards of Appeal decision, holding that in light of the average degree of distinctiveness of the earlier mark and the significant differences between the signs at issue, there was no likelihood of confusion on the basis of Article 8(1)(b) of the CTM Regulation.

The Court confirmed the Boards of Appeal decision, finding that the fact that the neck of both bottles can be described as helical-shaped is of very little relevance, as the shape of each neck is very different.

In this respect, the Court hold that the fact that the proportions between the length and width of the bottles are different, that the CTM application includes a verbal element not present in the earlier sign as well as the different shapes of the necks of the bottles distinguish the two marks.

No likelihood of confusion between AirPlus International and

The General Court confirmed in its decision of March 3, 2010 in [Case T-321/07 \(Lufthansa AirPlus Servicekarten GmbH/OHIM-Appplus Servicios Tecnológicos SL\)](#) that there was no likelihood of confusion between Lufthansa's prior Community Trademark Registration AirPlus International and the figurative CTM Application .

The Court found that the signs were visually, phonetically and conceptually dissimilar in spite of the presence of the common element PLUS, as a word mark in the prior mark and a symbol in the contested CTM Application, which was considered not to be susceptible of appropriation.

The Court held that due to the dissimilarities between the marks, there was no need to analyse the similarity between the products. Likewise, the plea based on Article 8.5 CTMR was also rejected as one of the conditions for this provision to be applied is the similarity between the signs.

ABSOLUTE GROUNDS FOR REFUSAL

SUDOKI SAMURAI BINGO is considered as devoid of distinctive character and descriptive

In its decision of March 4, 2010 in [Case T-564/08 \(Monoscoop BV/OHIM\)](#), the General Court confirmed the Boards of Appeal refusal of the mark SUDOKI SAMURAI BINGO in connection with a number of products in classes 9, 28 and 41.

The mark was rejected as it was considered to be descriptive and devoid of distinctive character for the claimed products as the sign in question provided with the names of each of the games involved independently of the fact that the conjunction & was missing.

The General Court reverses the Board of Appeal decision in the EURO AUTOMATIC CASH case

By its decision of March 9, 2010 in [Case T-15/09 \(Européenne de traitement de l'information \(Euro-Information\)/OHIM\)](#), the General Court reversed the Board of Appeal's decision of refusal for registration of the mark Euro Automatic Cash in classes 9, 35, 36, 37, 38 and 42. The Court hold that by the rejection of the mark for all the

products and services claimed without examining all the relevant categories of products and services, the Board had violated Article 7(1)(c) CTMR. In addition as the decision on the lack of distinctive character pursuant to Article 7(1)(b) had only been based on the descriptive character of the mark, the decision on this ground had been taken on the basis of an error. Therefore, the Board of Appeals decision was annulled.