

# World Trademark Review *Daily*

Notification to represented person not the same as notification to representative

European Union - Bureau DA Casalunga-Josse

Examination/opposition  
International procedures

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In *Aiello v Office for Harmonisation in the Internal Market* (OHIM) (Case T-279/09, July 12 2012), the General Court has annulled a decision of the First Board of Appeal of OHIM, holding that the board's failure to notify the opponent's pleading to the applicant's representative constituted a violation of Rules 50(1) and 20(2) of the [Community Trademark Implementation Regulation](#) (2868/95).

Cantoni ITC SpA filed an opposition against a Community trademark (CTM) application for the figurative mark 100% CAPRI in the name of Antonino Aiello on the basis of its earlier figurative CTM CAPRI and its earlier Italian word mark CAPRI.

The opposition was upheld by the Opposition Division and Aiello appealed. Cantoni filed a pleading in response to the appeal, which was sent to the fax number indicated in the CTM application, but not to the fax number of Aiello's appointed representative in the proceedings before the Opposition Division and the Board of Appeal. No response was filed by Aiello or its representative. The First Board of Appeal upheld the Opposition Division's decision.

Aiello subsequently filed an appeal before the General Court, contending that the Board of Appeal had infringed Rules 50(1) and 20(2). In particular, Aiello claimed that the failure to communicate the opponent's pleading to him constituted an infringement of his rights of defence. Read together, Rules 50(1) and 20(2) stipulate that, in proceedings before the Board of Appeal, OHIM must communicate the submissions of the opposing party to the applicant and invite the applicant to file observations in response.

First, the court held that there had been a procedural irregularity, since OHIM had not fulfilled the requirements of Rules 50(1) and 20(2) when it sent the opponent's pleading by fax to the number indicated in the CTM application, and not to the fax number of the applicant's representative.

In support of its reasoning, it noted that, pursuant to Rule 67(1) of the regulation, if a representative has been appointed, as was the case here, notification of the opponent's pleading to the applicant itself does not justify the failure to notify the applicant's representative. Further, it confirmed that it cannot be inferred from Rule 77 of the regulation that notification to the represented person is the same as notification to the representative.

Second, the court held that, had it not been for that procedural irregularity, the board's decision might have been substantially different since, in its decision, the board had accepted arguments contained expressly in Cantoni's pleading.

Consequently, the court annulled the board's decision, thereby further strengthening the importance of the rights of defence in procedures before OHIM.

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