Judgment of the Court of First Instance (Third Chamber) of 4 October 2007 — Advance Magazine Publishers v OHIM — Capela & Irmãos (VOGUE)

(Case T-481/04)

Community trade mark — Opposition proceedings — Application for a Community word mark VOGUE — Earlier national word mark VOGUE Portugal — Facts raised for the first time before the Board of Appeal — Extent of the examination carried out by the Board of Appeal

Community trade mark — Appeals procedure (Council Regulation No 40/94, Art. 74(2)) (see paras 20-21)

Re:

ACTION brought against the decision of the Second Board of Appeal (OHIM) of 27 September 2004 (Case R 328/2003-2) concerning opposition proceedings between J. Capela & Irmãos, L[da] and Advance Magazine Publishers, Inc.

Information relating to the case

Applicant for the Community trade mark:	Advance Magazine Publishers, Inc.
Community trade mark sought:	Word mark VOGUE for goods and services in Classes 9, 14, 16, 18, 25 and 41 — Application No 183756
Proprietor of the mark or sign cited in the opposition proceedings:	J. Capela & Irmãos, L[da]
Mark or sign cited in opposition:	National word mark VOGUE Portugal for goods in Class 25 and company name VOGUE — SAPATARIA
Decision of the Opposition Division:	Community trade mark refused for the goods and services in question
Decision of the Board of Appeal:	Appeal dismissed

Operative part

The Court:

1. Annuls the decision of the Second Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) of 27 September 2004 (Case R 328/2003-2);

2. Orders OHIM to bear its own costs and those incurred by Advance Magazine Publishers, Inc.

Order of the President of the Court of First Instance of 11 October 2007 — MB Immobilien v Commission

(Case T-120/07 R)

Interim measures — State Aid to the new Länder — Obligation to recover aid — Application for suspension of operation of a measure — Urgency — Balancing of interests

1. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Urgency — Serious and irreparable damage — Burden of proof — Financial loss — Situation which could jeopardise the existence of the applicant company — Assessment having regard to the company's group situation — Control held by a natural person not a legal person — Not relevant (Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2)) (see paras 33-38)*

2. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Balancing of all the interests involved — Commission decision ordering recovery of State aid (Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2)) (see paras 45, 46)*