Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

20 May 2014*

(Community trade mark — Opposition proceedings — Application for Community figurative mark ARIS — Earlier Community figurative mark ARISA ASSURANCES S.A. — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Coexistence of earlier marks on the market — Principle of American law known as the 'Morehouse defense' — Article 8(1)(b) of Regulation (EC) No 207/2009)

In Case T-247/12,

Argo Group International Holdings Ltd, established in Hamilton, Bermuda (United Kingdom), represented by R. Hoy, S. Levine and N. Edbrooke, Solicitors,

applicant,

v

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

defendant,

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

Arisa Assurances SA, established in Luxembourg (Luxembourg), represented by H. Bock, lawyer,

ACTION against the decision of the Second Board of Appeal of OHIM of 9 March 2012 (Case R 193/2011-2), concerning opposition proceedings between Arisa Assurances SA and Argo Group International Holdings Ltd,

THE GENERAL COURT (Second Chamber),

composed of M.E. Martins Ribeiro, President, S. Gervasoni (Rapporteur) and L. Madise, Judges,

Registrar: E. Coulon,

having regard to the application lodged at the Registry of the General Court on 6 June 2012,

having regard to the response of OHIM lodged at the Registry on 21 September 2012,

having regard to the intervener's response lodged at the Registry on 3 September 2012,

* Language of the case: English.

having regard to the reply lodged at the Registry on 18 December 2012,

having regard to the intervener's rejoinder lodged at the Registry on 3 April 2013,

having regard to the fact that no application for a hearing was submitted by the parties within the period of one month from notification of closure of the written procedure, and having therefore decided, acting upon a report of the Judge-Rapporteur, to give a ruling without an oral procedure, pursuant to Article 135a of the Rules of Procedure of the General Court,

gives the following

Judgment

Background to the dispute

1 On 13 November 2008, Art Risk Insurance and Information Services Corp. filed an application for registration of a Community trade mark with 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 following figurative sign:



3 The services in respect of which registration was sought are in Class 36 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 to the following description: 'Insurance services; writing title insurance for fine art, cultural artifacts [sic], antiquities, and other collectable tangible personal property; financial risk management services for the art and art-associated industries, including art museums, art foundations, cultural and non-profit institutions, private collectors, artists, art dealers, and art-associated banking, fiduciary, insurance, legal, and non-profit providers; financial risk management services in relation to other forms of insurance, including property and casualty insurance for the art and art-associated industries'.

4 The Community trade mark application was published in *Community Trade Marks Bulletin* No 10/2009 of 23 March 2009.

5 Art Risk Insurance and Information Services was already the proprietor of the Community word mark ARIS, registered on 12 September 2005.

6 On 18 June 2009, the intervener — Arisa Assurances SA — filed a notice of opposition, pursuant to Article 41 of Regulation No 207/2009, to registration of the mark applied for in respect of the services referred to in paragraph 3 above.

7 The opposition was based on the earlier Community figurative mark reproduced below, filed on 8 July 1996 and registered on 18 January 2000 under No 307470 in respect of 'insurance and reinsurance' in Class 36:



8 The ground relied on in support of the opposition was that set out in Article 8(1)(b) of Regulation No 207/2009.

9 On 23 November 2010, the Opposition Division upheld the opposition and rejected the Community trade mark application.

10 On 20 January 2011, Art Risk Insurance and Information Services filed an appeal with OHIM, pursuant to Articles 58 to 64 of Regulation No 207/2009, against the Opposition Division's decision.

11 On 3 March 2011, Art Risk Insurance and Information Services applied for registration of the transfer of its trade mark application to Argo Group International Holdings Ltd ('Argo Group' or 'the applicant'). The transfer was entered in the Register of Community trade marks on 4 March 2011.

12 By decision of 9 March 2012 ('the contested decision'), the Second Board of Appeal of OHIM dismissed the appeal brought by Art Risk Insurance and Information Services. In particular, it held that the appeal was admissible, even though it had not been brought by Argo Group, the proprietor of the trade mark application, as the transfer of the trade mark application to Argo Group had not been entered in the Register of Community trade marks before 20 January 2011, the date on which the notice of appeal was filed (paragraphs 17 to 23 of the contested decision). Regarding the likelihood of confusion between the two signs at issue, the Board of Appeal first stated that the relevant public comprised both members of the general public who are reasonably well informed and reasonably observant and circumspect and specialised consumers, whose level of attention is higher (paragraphs 45 and 46 of the contested decision). Secondly, the Board found that the services covered by the trade mark application and the earlier trade mark were identical or similar (paragraphs 47 and 48 of the contested decision). Thirdly, the Board of Appeal held that the signs at issue were similar overall, as their distinctive and dominant components — 'aris' in the mark applied for and 'arisa' in the earlier trade mark — were almost identical visually and highly similar aurally (paragraphs 49 to 55 and 58 of the contested decision). It accordingly reached the same conclusion as the Opposition Division, finding that there was a likelihood of confusion (paragraph 58 of the contested decision) and rejecting the contention that the two signs in question had coexisted in the European Union (paragraphs 25 to 28 of the contested decision).

Forms of order sought

13 The applicant claims that the Court should:

— annul or alter the contested decision;

— order OHIM to pay the costs.

14 OHIM contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

15 The intervener contends that the Court should:

— dismiss the action as inadmissible or, in the alternative, as unfounded;

— order the applicant to pay the costs.

Law

Admissibility

16 The intervener contends that the present action does not meet the requirements laid down in Article 44(1)(c) of the Rules of Procedure of the General Court, since the application makes no reference to any specific legal provision allegedly infringed by the Board of Appeal.

17 It should be borne in mind that, according to settled case-law, it is not necessary for a party expressly to indicate the provisions on which its pleas are based. It is enough for the subject-matter of that party's application and the main elements of fact and of law on which it is based to be set out sufficiently clearly in that application (see judgment of 15 January 2013 in Case T-451/11 *Gigabyte Technology* v *OHIM — Haskins (Gigabyte)*, not published in the ECR, paragraph 28 and the case-law cited), which is the situation in the present case.

18 It is sufficiently clear from the application that, in essence, the applicant is alleging an infringement of Article 8(1)(b) of Regulation No 207/2009, since it submits that the Board of Appeal erred in law in finding that the signs in question were similar and that there was accordingly a likelihood of confusion between them. Moreover, it expressly refers to that provision in its reply.

19 Furthermore, the applicant's reasoning is sufficiently clear and precise to enable OHIM and the intervener to prepare their defence and for the General Court to exercise its jurisdiction to review legality (see, to that effect, *Gigabyte*, paragraph 29 and the case-law cited). Indeed, OHIM and the intervener dispute the applicant's arguments in their entirety: in its response, OHIM has even expressly referred to the plea alleging infringement of Article 8(1)(b) of Regulation No 207/2009.

20 Consequently, the preliminary objection raised by the intervener must be rejected, and the Court must consider whether the single plea in law raised by the applicant, alleging infringement of Article 8(1)(b) of Regulation No 207/2009, is well founded.

Substance

21 Article 8(1)(b) of Regulation No 207/2009 provides that, 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.

22 It is settled law that the risk that the public might believe that the goods or services in question come from the same undertaking or from economically linked undertakings constitutes a likelihood of confusion. According to that line of authority, the likelihood of confusion must be assessed globally, according to the relevant public's perception of the signs and the goods or services concerned and account being taken of all factors relevant to the circumstances of the case, in particular the interdependence between the similarity of the signs and that of the goods or services covered (see Case T-162/01 *Laboratorios RTB* v *OHIM - Giorgio Beverly Hills (GIORGIO BEVERLY HILLS)* [2003] ECR II-2821, paragraphs 30 to 33 and the case-law cited).

The relevant public

23 According to settled case-law, in the global assessment of the likelihood of confusion, account should be taken of the average consumer of the category of products concerned, who is reasonably well informed and reasonably observant and circumspect. 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 (see Case T-256/04 *Mundipharma* v *OHIM - Altana Pharma (RESPICUR)* [2007] ECR II-449, paragraph 42 and the case-law cited).

24 In the contested decision, the Board of Appeal found that the relevant public in the case before it comprised both average consumers of insurance services, who are reasonably well informed and reasonably observant and circumspect, and specialised consumers, such as art dealers and legal and fiscal bodies, whose level of attention is higher (paragraphs 45 and 46 of the contested decision). In its analysis of the likelihood of confusion, the Board of Appeal concluded that there was such a likelihood, owing to the 'imperfect recollection' that the relevant public — including the consumers with the higher level of attention — would have of the signs in question (paragraph 58 of the contested decision).

25 The applicant submits that the Board of Appeal erred in law in failing to take into account, in its conclusions regarding the likelihood of confusion, the fact that specialised consumers of the services covered by the mark applied for have a heightened degree of attentiveness. According to the applicant, the difference in attentiveness between, on the one hand, the relevant public for those services and, on the other, the relevant public for the services covered by the earlier trade mark reduces the likelihood of confusion.

26 In that regard, it should be noted that, contrary to the applicant's assertions, the services covered by the earlier trade mark are not intended exclusively for the typical average consumer of generic forms of insurance, such as car insurance or travel insurance: as OHIM rightly points out, since the requirement that there be genuine use of the earlier trade mark was never invoked, that trade mark is protected for all insurance and reinsurance services, whatever the nature of the object insured, and regardless of the actual use of that trade mark, which may indeed be limited to car and travel insurance services (see, to that effect, judgment of 16 June 2010 in Case T-487/08 *Kureha* v *OHIM — Sanofi-Aventis (KREMEZIN)*, not published in the ECR, paragraph 71). Thus, depending on the object insured, the services covered by the earlier trade mark may be intended for the general public or for more specialised consumers.

27 On the other hand, although some of the insurance services referred to in the trade mark application are indeed more for specialised consumers in the field of art, that list of services also includes general insurance services, which are for the general public.

28 It follows that the services covered by the two marks at issue are intended for the same relevant public, which comprises both the general public and art professionals.

29 For the assessment in that situation of the likelihood of confusion, it is settled law that the public with the lowest attention level must be taken into consideration (see, to that effect, judgment of 15 July 2011 in Case T-220/09 *Ergo Versicherungsgruppe* v *OHIM — Société de développement et de recherche industrielle (ERGO)*, not published in the ECR, paragraph 21 and the case-law cited).

30 Consequently, even assuming that the Board of Appeal did not take into consideration consumers with a heightened degree of attentiveness, it cannot be criticised on that account in the circumstances of the present case.

31 Therefore, the Board of Appeal did not err in its definition of the relevant public in the circumstances; nor did it err as regards the public that it took into consideration when assessing the likelihood of confusion.

Similarity of the signs

32 According to settled case-law, the global assessment of the likelihood of confusion, in relation to the visual, aural or conceptual similarity of the signs at issue, must be based on the overall impression given by those signs, account being taken, in particular, of their distinctive and dominant components. The perception of the marks by the average consumer of the goods or services in question plays a decisive role in the global assessment of the likelihood of confusion. In that regard, the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (see Case C-334/05 P *OHIM* v *Shaker* [2007] ECR I-4529, paragraph 35 and the case-law cited).

33 In the contested decision, the Board of Appeal found that the dominant components of the marks at issue were the word elements ‘aris’ in the mark applied for and ‘arisa’ in the earlier trade mark. It found that the words ‘assurances s.a.’ in the earlier trade mark were not dominant, given the smaller typeface of the letters, their lower position in the mark in question and their lack of distinctiveness for a not insignificant number of consumers, and that the effects of the two trade marks in terms of style and colour were not so striking as to diminish the dominant character of ‘aris’ and ‘arisa’ (paragraphs 49 and 50 of the contested decision). In comparing the signs at issue, the Board of Appeal found that, visually, the elements ‘aris’ and ‘arisa’ were almost identical and that the only differences between the signs lay in the additional letter ‘a’ and the non-distinctive words ‘assurances s.a.’ in the earlier trade mark, and in their stylistic and coloured effects (paragraph 52 of the contested decision). It found that the signs at issue were highly similar aurally, since the mark applied for and the earlier trade mark would be pronounced ‘a-ris’ and ‘a-ri-sa’ respectively and the non-distinctive words ‘assurances s.a.’ would not be pronounced (paragraph 53 of the contested decision). The Board of Appeal held that no conceptual comparison could be carried out, given that neither of the signs in question had any meaning in the relevant territory (paragraph 54 of the contested decision). The Board accordingly concluded that the signs at issue were similar overall (paragraphs 55 and 58 of the contested decision).

34 First, the applicant disputes the determination of the dominant components of the signs at issue. In particular, it submits that the word elements of figurative marks such as those at issue in the present case cannot be more dominant than the figurative elements of such marks, all the more so in the present case because the word ‘aris’ has no meaning.

35 In that regard, it is important to bear in mind the settled case-law according to which, in order to assess the dominant character of one or more given components of a composite trade mark, account must be taken, in particular, of the intrinsic qualities of each of those components by comparing them with those of other components. In addition and accessorily, account may be taken of the relative position of the various components within the arrangement of the mark (Case T-6/01 *Matratzen*

Concord v *OHIM - Hukla Germany (MATRATZEN)* [2002] ECR II-4335, paragraph 35, and Case T-35/08 *Codorniu Napa* v *OHIM - Bodegas Ontañon (ARTESA NAPA VALLEY)* [2010] ECR II-5405, paragraph 35).

36 It follows that the determination of the dominant character of an element within a composite trade mark depends on a fact-based assessment of the various elements that go to make up the sign and is therefore not dependent on the nature of the sign in question, that is to say, on whether it is a figurative sign or a word sign. Accordingly, the figurative elements of a figurative mark are not necessarily the dominant components of that mark.

37 In the present case, the sign applied for consists of the word element 'aris', written in light grey capital letters, but with some parts of those letters not extant.

38 Contrary to the applicant's submissions, the graphic representation of the word element 'aris' cannot be considered to dominate the overall impression given by the mark applied for: it is merely a font designed to display the word element 'aris'. Thus, even if, as the applicant claims, that graphic representation gives the mark applied for a sleek appearance that evokes a feeling of elegant sophistication appealing to those involved in the art industry and corresponding to the type of services referred to in the trade mark application, the relevant public will tend, when referring to the mark in question, to pronounce the element 'aris' rather than to describe the graphic representation of that element. Moreover, the fact — emphasised by the applicant — that the element 'aris' has no meaning, and is therefore *a fortiori* not descriptive of the services designated, lends it inherent distinctiveness in the present case in relation to those services, which consolidates its dominant character in the overall assessment of the sign applied for (see, to that effect, judgment of 16 September 2013 in Case T-569/11 *Gitana* v *OHIM — Teddy (GITANA)*, not published in the ECR, paragraph 57 and the case-law cited).

39 As regards the earlier sign, it consists of an initial word element 'arisa' which is written in blue capital letters, except for the first diagonal of the first 'a', which is written in red. That initial word element is placed above the second word element 'assurances s.a.', written in smaller capitals that are also blue, from which it is separated by a blue line.

40 In view of its smaller size and its lower position in relation to the element 'arisa', it must be found that the word element 'assurances s.a.' is not the dominant component in the earlier sign. That finding is supported by the descriptive character of 'assurances s.a.' with regard to the insurance services concerned (see, to that effect, judgment of 27 November 2007 in Case T-434/05 *Gateway* v *OHIM — Fujitsu Siemens Computers (ACTIVY Media Gateway)*, not published in the ECR, paragraph 47 and the case-law cited). The same is true of the figurative elements of the earlier trade mark, such as the font, the colour and the underlining, the colours being ordinary and the graphics basic, as the applicant itself points out. As a consequence, those word and figurative elements cannot undermine the dominant character of the word element 'arisa', which is written in larger letters and placed above the other word element.

41 Accordingly, the Board of Appeal did not err in its determination of the dominant components of the signs at issue and the applicant's first argument must therefore be rejected.

42 Second, the applicant submits that the Board of Appeal did not carry out an overall assessment of the marks in question, but confined itself, both when assessing the similarity of the signs at issue and when taking that similarity into account for the purposes of assessing the likelihood of confusion, to comparing their dominant word elements, 'aris' and 'arisa'.

43 It is indeed clear from settled case-law that the assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in question as a

whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components (see *OHIM* v *Shaker*, paragraph 41 and the case-law cited). It is only if all the other components of the mark are negligible that the assessment of the similarity can be carried out solely on the basis of the dominant element (*OHIM* v *Shaker*, paragraph 42, and judgment of 20 September 2007 in Case C-193/06 P *Nestlé* v *OHIM*, not published in the ECR, paragraph 42). That may be the case where that element is likely, by itself, to dominate the image that the relevant public has of the mark, with the result that all the other components of the mark are negligible within the overall impression created (*Nestlé* v *OHIM*, paragraph 43).

44 In the present case, the Board of Appeal found that certain elements of the signs at issue were dominant, but did not regard the other elements as being so negligible as not to be taken into account in its comparison of the two signs. It was therefore under an obligation, by virtue of the case-law referred to above, to undertake a comparison in the course of which all elements of the signs at issue would be taken into consideration.

45 And indeed, consonant with that obligation, the Board of Appeal took into account, when assessing the visual similarities between the signs at issue, the dominant components that it had identified, namely, the word elements 'aris' and 'arisa', which it considered to be almost identical, and the word element 'assurances s.a.' and the figurative elements of those signs, which it considered to be different (paragraph 52 of the contested decision).

46 By the same token, while it is true that, when assessing the aural similarities between the signs at issue, the Board of Appeal compared only the elements 'aris' and 'arisa', it cannot be inferred from this that the Board did not carry out an overall assessment of those signs, since it took account of the only other element that could be pronounced — 'assurances s.a.' — and found that the relevant public would not pronounce it, owing to its lack of distinctiveness (paragraph 53 of the contested decision).

47 In its assessment of the conceptual similarities between the signs at issue, the Board of Appeal also carried out an overall assessment of those signs, in that it found that neither of the marks — that is, in the absence of any further clarification, neither of the two marks taken as a whole, including all their word and figurative elements — had any meaning in the relevant territory (paragraph 54 of the contested decision).

48 Lastly, in its analysis of the likelihood of confusion, the Board of Appeal examined each of the elements of the marks at issue, whether dominant or not, in order to carry out an overall assessment of the similarities between the signs, according a greater weight to the dominant elements and a lesser weight to the non-dominant elements (paragraph 58 of the contested decision).

49 The applicant's second argument must therefore be rejected.

50 Third, the applicant criticises the Board of Appeal's conclusion that the signs at issue were similar when the signs had been found to have a low degree of visual and aural similarity.

51 It is sufficient to note, in that regard, that the finding of a low degree of visual and aural similarity had been made by the Opposition Division, not by the Board of Appeal. Thus, in view of the settled case-law according to which the purpose of actions before the General Court is to obtain a review of the legality of decisions of the Boards of Appeal of OHIM within the meaning of Article 65 of Regulation No 207/2009 and not to obtain a review of the legality of decisions of the Opposition Division (see Case T-373/03 *Solo Italia* v *OHIM - Nuova Sala (PARMITALIA)* [2005] ECR II-1881, paragraph 25 and the case-law cited), that third argument must be rejected as ineffective *ab initio*.

52 It follows from the foregoing that the applicant has failed to establish that the Board of Appeal was wrong to find, in the contested decision, that the signs at issue were similar.

Likelihood of confusion

53 A global assessment of the likelihood of confusion implies some 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 concerned. Accordingly, a lesser degree of similarity between those goods or services may be offset by a greater degree of similarity between the marks, and vice versa (Case C-39/97 *Canon* [1998] ECR I-5507, paragraph 17, and Joined Cases T-81/03, T-82/03 and T-103/03 *Mast-Jägermeister* v *OHIM - Licorera Zacapaneca (VENADO with frame and Others)* [2006] ECR II-5409, paragraph 74).

54 In the present case, the Board of Appeal — rightly — concluded that there was a likelihood of confusion between the marks at issue in view of (i) the similarity or identity of the services covered by the marks at issue (paragraph 48 of the contested decision), an assessment which has not been challenged by the applicant, and (ii) the finding — not vitiated by error — that the two signs at issue are similar (see paragraph 52 above).

55 That conclusion cannot be undermined by the applicant's submission that the Board of Appeal did not take account of the coexistence on the market of, on the one hand, the earlier trade mark and, on the other, the Community word mark ARIS or the sign applied for and registered in the United States. Asserting that the Board of Appeal did not properly assess the evidence submitted in that regard, the applicant asks the General Court to apply the principle of American law known as the 'Morehouse defense', in accordance with which a person opposing the registration of a trade mark cannot be considered to be harmed by that registration where a trade mark that is identical or substantially similar to the mark applied for has already been registered in respect of identical or substantially similar goods or services by the person who has filed the trade mark application.

56 It should first of all be noted, as regards the applicant's reliance on the principle of American law mentioned above, that, according to settled case-law, the Community trade mark regime is an autonomous system with its own set of rules and objectives peculiar to it, which applies independently of any national system, and the legality of decisions of the Boards of Appeal must be evaluated solely on the basis of Regulation No 207/2009, as interpreted by the Courts of the European Union (see Case T-31/03 *Grupo Sada* v *OHIM - Sadia (GRUPO SADA)* [2005] ECR II-1667, paragraph 84 and the case-law cited).

57 Next, it should be noted that, admittedly, according to case-law, the possibility cannot be dismissed 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 conflicting marks. However, that possibility can be taken into consideration only if, at the very least, during proceedings before OHIM concerning relative grounds of refusal, the proprietor of the contested 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 marks concerned and the marks at issue are identical (*GRUPO SADA*, paragraph 86, and judgment of 14 November 2007 in Case T-101/06 *Castell del Remei* v *OHIM — Bodegas Roda (CASTELL DEL REMEI ODA)*, not published in the ECR, paragraph 76).

58 In the present case, the evidence produced in order to establish the applicant's use of the Community word mark ARIS cannot be taken into account, as that mark is different from the marks at issue, which are both figurative. Secondly, the evidence reproducing the sign applied for as registered in the United States — comprising extracts from the website of the former proprietor of the mark applied for and an article dated 21 July 2010 evoking, inter alia, the insurance services provided by the former proprietor under that trade mark — concerns only the sign applied for and does nothing to indicate the presence of that sign on the EU market, the relevant market in the present case; nor, *a fortiori*, does it give any indication of how the relevant public has been exposed to the marks at issue on that market.

59 Consequently, as the Board of Appeal found in the contested decision (paragraphs 27 and 28), the evidence put forward by the applicant does not establish that marks identical to the marks at issue have coexisted; nor, *a fortiori*, that such coexistence would reduce the likelihood of confusion between those marks for the purposes of the case-law cited above, there being no need to rule on the admissibility of Annex 11 to the application, which sets out the principle of the 'Morehouse defense', or of Annex I.1(b) to the intervener's response, produced by the intervener in order to challenge the applicant's argument asserting such coexistence.

60 It follows from all of the foregoing that the Board of Appeal was right to conclude that there was a likelihood of confusion and to dismiss the appeal against the Opposition Division's decision.

61 The applicant's single plea in law must therefore be rejected and, in consequence, the action must be dismissed in its entirety, without there being any need to give a ruling on the merits of the intervener's argument that the appeal before the Board of Appeal was inadmissible.

Costs

62 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.

63 Since 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 (Second Chamber)

hereby:

1. Dismisses the action;

2. Orders Argo Group International Holdings Ltd to pay the costs.

Martins Ribeiro Gervasoni Madise

Delivered in open court in Luxembourg on 20 May 2014.

[Signatures]