Judgment of the Court of First Instance (Fifth Chamber) of 11 December 2007 — Portela & Companhia v OHMI — Torrens Cuadrado et Sanz (Bial)

(Case T-10/06)

Community trade mark — Opposition proceedings — Application for figurative Community trade mark Bial — Earlier national word mark BIAL — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 — Proof of existence of the earlier mark — Coexistence of earlier marks — Plea amending subject-matter of the proceedings — Evidence presented for the first time before the Court of First Instance — Costs incurred before the Opposition Division

1. *Community trade mark — Observations of third parties and opposition — Examination of the opposition — Proof of registration or filing of the earlier mark (Commission Regulation No 2868/95, Rule 16(2)) (see para. 34)*

2. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark (see para. 76)*

Re:

ACTION brought against the decision of the First Board of Appeal of OHIM of 14 September 2005 (Case R 897/2004-1) concerning opposition proceedings between (a) Juan Torrens Cuadrado and Josep Gilbert Sanz and (b) Portela & Companhia, SA.

Information relating to the case

Applicant for the Community trade mark:	Portela & Companhia, SA
Community trade mark sought:	Figurative mark Bial — Application No 1400183
Proprietor of the mark or sign cited in the opposition proceedings:	Juan Torrens Cuadrado and Josep Gilbert Sanz
Mark or sign cited in opposition:	Spanish word mark BIAL
Decision of the Opposition Division:	Opposition partially upheld
Decision of the Board of Appeal:	Decision of the Opposition Division confirmed in its entirety

Operative part

The Court:

1. Annuls the decision of the First Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) of 14 September 2005 (Case R 897/2004-1) in so far as it orders the applicant to pay the sum of EUR 600 towards the costs incurred by Mr Torrens Cuadrado and Mr Gilbert Sanz for the opposition proceedings;

2. Dismisses the remainder of the application;

3. Orders Portela & Companhia, SA to pay, in addition to its own costs, half the costs incurred by OHIM.