Operative part

The Court

1. Declares that by unilaterally instituting a system of traceability of skimmed-milk powder for certain uses, not provided for by harmonised provisions of Community law applicable to the sector, the Italian Republic has failed to fulfil its obligations under Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products and Commission Regulation (EC) No 2799/1999 of 17 December 1999 laying down detailed rules for applying Regulation (EC) No 1255/1999 as regards the grant of aid for skimmed milk and skimmed-milk powder intended for animal feed and the sale of such skimmed-milk powder;

2. Orders the Italian Republic to pay the costs.

Order of the Court (Fifth Chamber) of 29 June 2006 — Creative Technology v OHIM

(Case C-314/05 P)

(Appeal — Community trade mark — Article 8(1)(b) of Regulation (EC) No 40/94 — Likelihood of confusion — Application for Community word mark 'PC WORKS' — Opposition by the proprietor of the national figurative mark 'W WORK PRO' — Appeal in part clearly inadmissible and in part clearly unfounded)

1. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an identical or similar earlier trade mark registered for identical or similar goods or services (Council Regulation No 40/94, Art. 8(1)(b)) (see paras 31-32, 37-39)*

2. *Appeal — Grounds — Incorrect assessment of the facts — Inadmissibility — Review by the Court of Justice of the assessment of the facts before the Court of First Instance — Excluded except in the case of distortion of the facts (Art. 225 EC; Statute of the Court of Justice, Art. 58) (see paras 35-36)*

Re:

APPEAL brought against the judgment of the Court of First Instance (Fourth Chamber) of 25 May 2005 in Case T-352/02 *Creative Technology* v *OHIM*, dismissing as unfounded an action brought by the applicant for the Community trade mark 'PC WORKS' for goods in Class 9 against decision R 265/2001-4 of the Fourth Board of Appeal of the Office for Harmonization in the Internal Market (OHIM) of 4 September 2002 dismissing the appeal against the decision of the Opposition Division refusing to register that trade mark in opposition proceedings brought by the holder of the national figurative mark 'W WORK PRO' for goods in Class 9.

Operative part

The Court

1. Dismisses the appeal;

2. Orders Creative Technology Ltd to pay the costs.