

## Case T-317/05

**Kustom Musical Amplification, Inc.**

**v**

**Office for Harmonization in the Internal Market  
(Trade Marks and Designs) (OHIM)**

(Community trade mark — Three-dimensional mark — Shape of a guitar —  
Absolute ground for refusal — Infringement of the rights of the defence —  
Statement of reasons — Article 73 of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Third Chamber), 7 February 2007 II - 429

### Summary of the Judgment

1. *Community trade mark — Procedural provisions — Decisions of the Office — Observance of the rights of the defence*  
(Council Regulation No 40/94, Art. 73)

2. *Community trade mark — Procedural provisions — Statement of reasons for decisions (Council Regulation No 40/94, Art. 73)*

1. A decision of a Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) which, at the time of adopting a decision rejecting an application for a Community trade mark, takes account of facts which were not communicated to the applicant prior to the adoption of that decision infringes Article 73 of Regulation No 40/94 on the Community trade mark, according to which OHIM decisions may be based only on grounds on which the parties have been able to take a position. The very conclusion of that decision is vitiated where it is based on those factual elements.

(see paras 45, 46, 55)

2. The duty to give reasons for a decision laid down in the first sentence of Article 73 of Regulation No 40/94 on the Community trade mark has two purposes: to allow interested parties to know the reasons for the measure so as

to enable them to defend their rights and to enable the Community judicature to exercise its power to review the legality of the decision. Whether a statement of reasons satisfies those requirements is a question to be assessed with reference not only to its wording but also to its context and the whole body of legal rules governing the matter in question.

The sending of the points of fact constituting the basis of a decision of the Board of Appeal of the OHIM in the form of internet links which are inaccessible at the time of the Court's investigation of the case, or in the form of accessible links whose content has changed or might have changed since the examination by the examiner or the Board of Appeal, does not constitute a sufficient statement of reasons since it does not enable the Court to review the validity of the contested decision.

(see paras 57, 59)