

**Re:**

APPLICATION for the annulment of Commission Decision C(2006) 5618/4 of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances, notified by the United Kingdom of Great Britain and Northern Ireland in accordance with Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

**Operative part**

1. The action is dismissed as inadmissible;
2. It is unnecessary to give a ruling on the application for leave to intervene by Castle Cement Ltd;
3. Cemex UK Cement Ltd is ordered to bear its own costs and pay those incurred by the Commission;
4. The United Kingdom of Great Britain and Northern Ireland is ordered to bear its own costs.

**Judgment of the Court of First Instance (Fifth Chamber) of 7 November 2007 —  
Marly v OHIM — Erdal (Top iX)**

**(Case T-57/06)**

Community trade mark — Opposition proceedings — Application for figurative  
Community trade mark Top iX — Earlier international word mark TOFIX —

Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 — Request for proof of genuine use of the earlier mark submitted for the first time before the Court — Inadmissibility

1. *Community trade mark — Appeals procedure — Action before the Community judicature (Rules of Procedure of the Court of First Instance, Art. 135(4); Council Regulation No 40/94, Arts 63(2) and 74(1)) (see paras 15-18)*
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 (Council Regulation No 40/94, Art. 8(1)(b)) (see paras 88, 90)*

**Re:**

ACTION brought against the decision of the Second Board of Appeal of OHIM of 14 December 2005 (Case R 1147/2004-2) concerning opposition proceedings between Erdal GmbH and NV Marly SA.

**Information relating to the case**

Applicant for the Community trade mark:	NV Marly SA
Community trade mark sought:	Figurative mark Top iX for goods in Class 3 — Application No 2326072
Proprietor of the mark or sign cited in the opposition proceedings:	Erdal GmbH
Mark or sign cited in opposition:	International word mark TOFIX for goods and services in Classes 3 and 4
Decision of the Opposition Division:	Opposition upheld
Decision of the Board of Appeal:	Appeal dismissed

## **Operative part**

The Court:

1. Dismisses the action;
2. Orders NV Marly SA to pay the costs.

### **Judgment of the Court of First Instance (First Chamber) of 8 November 2007 — MPDV Mikrolab v OHIM (manufacturing score card)**

**(Case T-459/05)**

Community trade mark — Community trade mark application in respect of  
manufacturing score card word mark — Absolute grounds for refusal —  
Descriptiveness — Lack of distinctive character — Article 7(1)(b) and (c) of  
Regulation (EC) No 40/94

*Community trade mark — Definition and acquisition of the Community trade mark  
— Absolute grounds for refusal — Marks composed exclusively of signs or indications  
capable of serving to designate the characteristics of a product (Council Regulation  
No 40/94, Art. 7(1)(c)) (see paras 25, 26)*

**Re:**

ACTION brought against the decision of the Second Board of Appeal of OHIM of  
19 October 2005 (Case R 1059/2004-2) concerning an application for registration of  
the manufacturing score card word mark as a Community trade mark.