

Alicante, 27/07/2017
R0453/2017-2

Brandconcern BV
Goudstraat 99
NL-2718 RD Zoetermeer
PAÍSES BAJOS

Subject: Appeal No. R0453/2017-2 LAMBRETTA
Your ref.: LAMBRETTA (OAMI 22)

Notification of a decision of the Boards of Appeal

Please find enclosed the decision of the Second Board of Appeal dated 11/07/2017 concerning the appeal R0453/2017-2.

Article 65 EUTMR provides that an action may be brought before the General Court against decisions of the Boards of Appeal. The action shall be brought within two months from the date of notification of the decision of the Board of Appeal.

Please be informed that the texts governing the procedure before the General Court, in particular the Rules of Procedure and the Decision on the lodging and service of procedural documents by electronic means (e-Curia) may be consulted on the Curia web site at <http://curia.europa.eu/jcms/jcms/Jo27040/>.

To the extent that you are adversely affected by the attached decision and you nonetheless decide not to challenge it, please inform us accordingly as soon as possible.

Christelle BERAT
Registry

Enc.: 1 (21 pages)

DECISION
of the Second Board of Appeal
of 11 July 2017

In Case R 453/2017-2

Scooters India Limited

Post Bag No 23

Sarojini Nagar

Lucknow 226 008

India

EUTM Proprietor / Appellant

represented by Boulton Wade Tennant, Verulam Gardens 70 Gray's Inn Road, London WC1X 8BT, United Kingdom

v

Brandconcern BV

Goudstraat 99

2718 RD Zoetermeer

The Netherlands

Cancellation Applicant / Respondent

APPEAL relating to Cancellation Proceedings No 2 560 C (European Union trade mark registration No 1 495 100)

THE SECOND BOARD OF APPEAL

composed of T. de las Heras (Chairperson), H. Salmi (Rapporteur) and R. Ocquet (Member)

Registrar: H. Dijkema

gives the following

Decision

Summary of the facts

- 1 By an application filed on 7 February 2000, Scooters India Limited (hereinafter 'the EUTM proprietor') sought to register the word mark

LAMBRETTA

for inter alia the following list of goods:

Class 3 - Soaps; perfumery, essential oils, cosmetics, hair lotions;

Class 12 - Vehicles; apparatus for locomotion by land, air or water;

Class 18 - Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery;

Class 25 - Clothing, headgear.

- 2 The application was published on 25 September 2000 and the mark was registered on 6 August 2002.
- 3 On 19 November 2007, the cancellation applicant filed an application for a revocation of the contested trade mark on the basis of Article 50(1)(a) and 50(2) of Regulation 40/94 (subsequently Article 51(1)(a) and 51(2) of Regulation 207/2009 and which will be referred to throughout the decision as 'EUTMR'). The cancellation applicant indicated in the application, that the extent of the application for revocation was against part of the goods in the challenged registration, namely:

Class 3 – Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices;

Class 12 – Vehicles; apparatus for locomotion by land, air or water;

Class 18 – Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.

- 4 During the revocation proceedings, the parties submitted the following evidence as summarised by the Cancellation Division:

Evidence filed by the EUTM proprietor

- Witness statement by Steven David Filch, Finance Director of Fine White Line Limited (henceforth FWL) and exclusive licensee in the United Kingdom of the registered EUTM. In the statement, Mr Filch states that the license contract for use of the sign 'Lambretta' in the United Kingdom was originally entered into by Mr Derry Kunman Limited in March 1997. Subsequently, FWL took over the license contract on 8 September 2006 with an effective

date of 1 April 2006. With regard to the goods in Class 3, Mr Filch stated that FWL had entered into a sub-licensing contract with Link Brand Solutions Limited (henceforth LBSL). The further statements by Mr Filch will be referred to in the context of the respective exhibits;

- Copy of a license contract between Scooters India Limited (SIL) and FWL. The contract is dated 28 January 2005 and gives FWL an exclusive right to use the trade mark 'LAMBRETTA' in a number of countries. As far as is relevant for the case at hand, the contract indicates the right of the licensee to use the trade mark for goods in Classes 3, 9, 12, 14, 18, 25 and 26 in the United Kingdom. With regard to its duration and scope, the contract refers to two previous license contracts; the first between SIL and Derry Kunman Limited and the second between SIL and FWL. These contracts were dated 12/06/1998 and 18/09/2001. Furthermore the exhibit contains a copy of a license contract, dated 8 September 2006 between Scooters India Limited and FWL. The annexed schedule, in addition to the previously mentioned goods for the United Kingdom, indicates that within the European Union, the license is based on the contested EUTM and relates to use of the sign for goods in Classes 6, 7 and 28 (Exhibit SDW1);
- Copy of a sub-licensing contract between FWL and LBSL. The contract is dated 17 February 2003 and indicates duration until 31 March 2006. The products defined by the contract are packaging and toiletries, cosmetics and fragrances within Class 3 of the Nice classification. (Exhibit SDW2);
- Two copies of photographs of packaging for a deodorant, body wash, hair wax and body spray. The packaging is marked with the trade mark 'Lambretta'. The documents are undated. (Exhibit SDW3);
- Five invoices from the sub-licensee LBSL, dated December 2005 and March 2006. The invoices are addressed to companies in the United Kingdom. They specify sales of various 'Lambretta' goods; body spray, body wash and hair wax. The quantities specified vary from a few dozen units to over 500 units and the order values vary between GBP 2 200 and GBP 8 100. (Exhibit SDW4);
- Copy of a settlement agreement between the Lambretta Club of Great Britain on the one hand and Scooters India Limited, Derry Kunman and Derry Kunman Limited on the other hand. The agreement is dated 13/08/1999. In Chapter 1, Mr Walsh of the Lambretta Club of Great Britain undertakes not to interfere with the future use or registration of the mark in the United Kingdom by Scooters India Limited, by Mr Kunman himself or by Derry Kunman Limited. Moreover, the Club undertakes to use the 'Lambretta' mark only in relation to goods offered by the club via mail order or at special scootering events, this restriction being without prejudice to the Club's freedom to provide services under the mark in the United Kingdom on a non-profit basis. (Exhibit SDW5);
- Copies from the magazine 'Scootering', showing a cover page, dated January 2004, showing a 'Lambretta' scooter; advertising pages, partly dated January 2004, containing advertising for the Lambretta Club, first and foremost giving its contact details. There are also other advertisements, among others, for

spare parts for 'Lambretta' scooters, where the 'Lambretta' trade mark is shown, however with reference to a multitude of dealers rather than any of the parties involved in the present case. A second front cover of 'Scootering', dated October 2007, contains the text 'Lambretta 60th anniversary'. Two advertising pages, seemingly relating to this issue, contain advertising for 'Lambretta' scooter spare parts offered for sale by Resurrection Scooters UK. Some of the spare parts dealers display a stamp 'Lambretta Club Great Britain Super Dealer'. Moreover, the exhibit contains printouts from the web page www.lambretta.co.uk. This web page contains information on workshops and has links to online sales of spare parts for scooters, to auction sites for second hand scooters, etc. Finally, the exhibit contains excerpts from a web page seemingly produced by an entity known as 'Cambridge Lambretta'. The web page excerpts are dated March 2008. (Exhibit SDW6);

- In the witness statement by Mr Filch, he refers to the settlement agreement in Exhibit SDW5. Mr Filch states that the use of the sign 'Lambretta' in Exhibit SDW6 was carried out by members of or persons authorised by the Lambretta Club Great Britain during the relevant time. The EUTM proprietor's licensee argued that the settlement agreement proves that the use of the sign 'Lambretta' carried out by members of the Lambretta Club, or persons having been authorised by the club, falls under Article 15(2) EUTMR and hence should be regarded as genuine use by the EUTM proprietor;
- With regard to goods in Class 12, the EUTM proprietor's licensee argued that it had been difficult to find a sub-licensee to manufacture and distribute vehicles. It claimed to have negotiated with a number of possible sub-licensees since 2005 and that in May 2008 it was close to concluding such agreements for bicycles, electric bicycles and petrol scooters. In support of these allegations, Mr Filch referred to excerpts from communications between FWL and interested parties, allegedly showing that preparations were taken for the re-commencement of use of the contested mark for goods in Class 12 at least three months before the filing of the application. The documents in question are copies of e-mails between Derry Kunman and third parties. The major part of the evidence consists of a general prospect of a project and a presentation of purported business partners. The remainder consists of three e-mails of tentative discussions regarding the possible target group, preferences of style, etc. of the group in question and of possible scooter dealers (Exhibit SDW7);
- A statement by Mr Richard Allmark, CEO of Fisher Outdoor leisure, dated 2 May 2008. Mr Allmark stated that his company was negotiating with FWL with a view to launching a range of bicycles under the 'Lambretta' trade mark in the UK and Europe 'within the next few months'. (Exhibit SDW8);
- Copy of a sub-license contract between FWL and Capella Industries AB (henceforth CIAB), dated 3 April 2006 concerning use of the 'Lambretta' trade mark in the European Union for watches and jewellery in Class 14. (Exhibit SDW9);
- Excerpts from a web page, partly empty, partly containing text relating to 'The Lambretta Concept' and mentioning a planned release of a range of watches under the 'Lambretta' trade mark (dated 30/08/2005). In a second page it is stated that 'the Lambretta brand was reborn in 1997. Not the

scooters but clothes, shoes and accessories.’ The official release of ‘Lambretta’ Watches took place in April 2000. Furthermore, the exhibit contains a copy of a promotional advertisement from Capella Industries, showing a watch marked ‘Lambretta’. The watch is being referred to as the Luna edition 2002, planned for a limited release of 300 units on the market in Italy, Sweden and the United Kingdom. Two further pages relate to editions 2002 and 2003, respectively. Finally, one page, promotes the release in the year 2006 of the ‘Lambretta jewellery’. (Exhibit SDW10);

- Copies from a promotional website for a range of watches and jewellery sold by the sub-licensee CIAB. The printouts were made on 15/02/2008. The heading of the first page reads ‘Welcome to Lambretta’ and further pages contain images of a range of watches marked with the sign ‘Lambretta’. There are also a handful of pages promoting jewellery such as pendants, ‘dog tags’ and rings. The trade mark ‘Lambretta’ features in some of these pages. (Exhibit SDW11);
- Invoices from CIAB to Chrono UK Limited for watches and jewellery. The invoices are dated December 2002, December 2003, March 2004 and one invoice is dated July 2006. This last invoice comprises sales of 26 ‘units’ at a total cost of USD 912. It is however not indicated whether these units are watches, jewellery or other goods. One of the items is marked ‘Lambro Scooter’ whereas the other items are not indicated as relating to ‘Lambretta’ products. (Exhibit SDW12);
- A copy of a sub-license contract between FWL and Lambretta Clothing Limited (LCL). The contract is dated 17/03/2006. Under heading 2, ‘Commencement and duration’, it is indicated that the agreement shall come into force on 1 April 2006. The license relates to use of the ‘Lambretta’ trade mark in the United Kingdom and the European Union. The licensed goods are identified as ‘clothing, excluding clothing and accessories pertaining to goods in Class 12, including hand wear, underwear, nightwear, socks, belts, travel bags, luggage, wallets, purses and related personal accessory leather goods. (Exhibit SDW13);
- Copies from web pages where clothes and shoes of various brands are marketed. A so-called web-archive printout from February 2003 shows promotion of a t-shirt and a cap with the printed text ‘Lambretta Club Great Britain’. An excerpt from ‘Original Shoe Co’ indicates that ‘Lambretta’ is among the brands promoted via the site; however the excerpt is not dated. A copy from ‘Lambretta Clothing’, dated ‘summer 2007’ shows the ‘Lambretta’ trade mark together with a scooter in the heading. Further down on the page are links to clothing and watches. The following page contains a reference to a review of a retail site, carried out in September 2003. Further down on this page it is stated that ‘Lambretta’ is one of the brands featured on the site. Finally a set of pages from the web archive, indicating the date 17/04/2007, show the ‘Lambretta’ trade mark on a promotional site by Lambretta Clothing, featuring clothes. (Exhibit SDW14);
- A set of invoices, allegedly showing sales of goods in Classes 18 and 25. There are several invoices which indicate receivers in the United Kingdom but without any indication as to the sender. Furthermore, the specifications of

these invoices are unclear or incomprehensible. Four invoices emanate from 'Derry Kunman, Lambretta Licensing'. They are dated 2005, 2006, 2007 and 2008 and seem to refer to sales of clothing to clients in the United Kingdom. Excluding the invoice dated 2007, which refers to '720 pairs', the quantities are small, ranging from less than ten to eighty. (Exhibit SDW15);

Evidence filed by the cancellation applicant:

- A set of copies from e-mail correspondence between the cancellation applicant and the EUTM proprietor suggesting that, in March 2009, the EUTM proprietor was not aware of the current proceedings, nor did it support the filing of evidence of use by its licensee FWL;
- Translations of statements made before the IP Court of Milan, Italy, in proceedings between Brandconcern BV et al. on the one hand and Fine White Line (in its capacity as the licensee of SIL) et al. on the other and allegedly relating to the same trade mark. The object of the proceedings appears to be a precautional plea *ante causam* raised by FWL et al. The translation covers the argumentation of the Brandconcern BV party as presented before the Court at second instance. Moreover, the protocol also refers to declarations made by some of the witnesses. Mr Leone Schiavo, President of the Lambretta Club in Italy and Mr Vittorio Tessera, owner of the Lambretta Spareparts Historic Archive. Both stated that, to their knowledge, since 1991 no motorcycles nor scooters have been sold or distributed in Italy by SIL, FWL, Derry Kunman or any other organisation related to these persons. (Annexes 1-4);

Additional evidence filed by the EUTM proprietor

- Declaration by Daniela de Pascale of La Scala & Associati, where she states that FWL is the exclusive licensee for the 'Lambretta' trade mark within the European Union. (Exhibit DDP-1);
- Copy of an e-mail, also referred to by Ms de Pascale. The e-mail was sent from SIL to FWL on 31 October 2008. The text relates to legal proceedings before an Italian Court, in which FWL represented the interests of SIL. (Exhibit DDP-2);
- Statement made by Harry Willits of FWL in which he refuted the allegations made by the applicant, that SIL was unaware of the current proceedings. (Exhibit 2);
- A declaration by Steve David Wilch, Finance director of FWL, dated June 2009. In the declaration, Mr Wilch stated that, at that time, SIL had been selling spare parts to 'Lambretta' motorcycles in Italy for more than fifteen years. To further corroborate the statement, he also referred to the following documents: (Exhibit 3);
- A declaration dated 8 October 2008 from Ernesto Sacci, owner of the website www.lambretta.it, a website specialised in information on the history and on events for owners, collectors and fans of the 'Lambretta' scooter. Mr Sacci stated that SIL has sold spare parts for 'Lambretta' scooters in Italy for at least fifteen years. The statement is accompanied by a number of copies from the website, featuring among others a page where spare parts are offered for

sale, at a fixed price or by auction by external users of the website. The copies are dated 08/10/2008 (Exhibit SDW 2-1);

- A copy of SIL's catalogue for spare parts for 'Lambretta' scooters. (Exhibit SDW 2-2). The first page contains the name and logo of the EUTM proprietor. In the heading, the words 'spares catalogue' appear in English, Italian, French and German. The trade mark 'Lambretta' features together with cutaway drawings showing the various spare parts. (Exhibit SDW 2-2);
 - Copy of a letter from Gianluca Giombolini, Director of Brade S.r.L., based in Cesena, Italy. The Director states that, since the winter season 2002, his company had marketed and sold clothing, accessories and underwear in Italy under the 'Lambretta' trade mark in outlets of Brade S.r.L., totalling more than one hundred and fifty sales outlets in Italy. (Exhibit SDW 2-3);
 - A set of 100 invoices sent to (what can be concluded from their names) clothes shops in Italy. They are dated February 2006 and February 2007. The sender company is not indicated; however delivery seems to have taken place from an address in Cesena. The goods are specified with codes. Some of these codes indicate clothes sizes, such as 34'. The amounts vary between a couple of hundred Euro up to more than EUR 7 000. (Exhibit SDW 2-4);
 - A list of catalogue amendments with 'Lambretta Accessories' dated 2004, 2005 and spring/summer 2007 with eight pages dedicated to accessories such as bags, travel bags, scarves, hats etc. Some of the codes from the invoices appear in the catalogue. The trade mark 'Lambretta' appears in a figurative version in the catalogue pages and on most of the depicted clothes (Exhibit SDW 2-5).
- 5 By decision of 24 September 2010 (hereinafter 'the contested decision'), the Cancellation Division partially revoked the mark 'LAMBRETTA', with effect from 19 November 2007, in respect of the goods in Classes 3 (with the exception of 'perfumery, essential oils, cosmetics, hair lotions') 12 and 18.
- 6 Within the set time limit the EUTM proprietor filed an appeal against the contested decision which included the revocation for 'vehicles; apparatus for locomotion by land, air or water' in Class 12. In the course of the appeal, the EUTM proprietor filed, amongst others, the following admissible evidence:

Class 12

- A written statement from the technical director of the EUTM proprietor dated 19 January 2011, including the following invoices:

Invoice No	Date	Location of purchaser	Description of goods	Amount in GBP
EXP/04/2005-2006	27 March 2006	U.K.	Spare parts for Lambretta 2 Wheelers	22 646.33
EXP/02/2005-2006	11 March 2006	U.K.	idem	4 371.17
EXP/01/2005-2006	22 September 2005	U.K.	idem	20 080.71

- A copy of an ocean bill of lading dated 31 March 2006, which relates to invoice EXP/04/2005-2006 of 27 March 2006;
 - A copy of an ocean bill of lading dated 31 March 2006, which relates to invoice EXP/02/2005-2006 of 11 March 2006;
 - A copy of a handwritten document dated 23 May 2005. The addressor and the addressee remain unknown;
 - A copy of a letter addressed by a UK company to the EUTM proprietor dated 10 March 2006 confirming the payment of four invoices issued by the latter on 16 February 2006 for a total amount of GBP 48 328.74; The letterhead describes the purchaser as a 'Lambretta Specialists Scooter Spares & Accessories'. Moreover, the letter refers to a certain amount of '200GP200 damaged crankshafts' delivered on November 2005. It can therefore be inferred that these four invoices relate to scooter spare parts manufactured and delivered to the United Kingdom by the EUTM proprietor;
 - A copy of an advertisement published in a magazine distributed under the title 'Scooter Trader', dated January 2004 advertising the sale of 'Lambretta' spare parts. The prices are indicated in GBP and it can therefore be presumed that this publication was circulated in the United Kingdom;
 - A copy of an undated photograph showing the logo of the EUTM proprietor and scooters bearing the trade mark 'Lambretta'. The photo is undated and the EUTM proprietor has not provided any indication in this regard.
- 7 In reply to the new evidence filed by the EUTM proprietor, the cancellation applicant also submitted other admissible evidence with respect to the goods in Class 12, including 4 Witness Statements, 2 pages of a 27 page accounting Report as published in 2004 called 'Turning Around a State Owned Enterprise: The case of Scooters India', Cancellation Division decision of 24 September 2010, 2 555 C, Lambretta (revocation for goods in Classes 6, 7 and 28), and 4 UK Intellectual Property decisions (revocation of 'Lambretta' marks including for goods in Class

- 12; the trade mark proprietor had not advanced any reasons as to why revocation should not take place).
- 8 By decision of 1 December 2011 (hereinafter ‘the Board’s 2011 decision’), the First Board of Appeal annulled the contested decision insofar as the mark ‘LAMBRETTA’ had been revoked in respect of ‘soaps’ in Class 3. The Board of Appeal dismissed the appeal as to the remainder and also dismissed the cancellation applicant’s ‘ancillary appeal’. In particular, it found that the evidence submitted by the EUTM proprietor was limited to the sale of spare parts for scooters from which it could not be inferred that the EUTM proprietor had also manufactured and sold any vehicle within the relevant territory.
 - 9 Within the set time limit the EUTM proprietor brought an action before the General Court, requesting annulment of the Board’s 2011 decision in so far as the Board had dismissed the EUTM proprietor’s appeal in relation to the goods in Class 12. In support of its action, the EUTM proprietor put forward a single plea in law, alleging infringement of Article 51(2) of Regulation No 207/2009. It put forward two complaints in that regard, namely alleging that the Board of Appeal erred in:
 - 1) confining its examination to some of the goods in Class 12 covered by the mark ‘LAMBRETTA’
 - and
 - 2) not taking the actual use of the mark in connection with parts into account in order to determine whether there had been genuine use of the mark in connection with the goods of which they are an integral part.
 - 10 On 30 September 2014, the General Court annulled the Board’s decision (30/09/2014, T-51/12, LAMBRETTA, EU:T:2014:844). In the context of examining the first part of the single plea in law, the General Court found that the words ‘vehicles; apparatus for locomotion by land, air or water’ in the European Union trade mark application as filed before the Office on 7 February 2000 had to be interpreted as intended to protect the trade mark ‘LAMBRETTA’ in respect of all the goods in the alphabetical list in Class 12 of the Nice Agreement. The General Court also took the view that, even if ‘spare parts for scooters’ did not actually appear in the alphabetical list of goods in Class 12, the Board of Appeal was required to examine whether there had been genuine use of that mark in respect of the many fittings and parts listed therein. Consequently, finding that the Board of Appeal had not examined the genuine use of that mark for those spare parts for scooters, the General Court upheld the first part of that plea and annulled the contested decision.
 - 11 As regards the second part of the single plea in law, the General Court found that, as a result of the annulment of the contested decision as determined in the context of the first part, the Board of Appeal had to consider whether Scooters India had made use of the trade mark ‘LAMBRETTA’ in respect of spare parts. The General Court took the view that the examination had to be made in accordance with the criteria set out by the Court of Justice in its judgment of 11/03/2003, C-40/01, Minimax, EU:C:2003:145, § 40 to 43.

- 12 Within the set time limit therefor, the cancellation applicant filed an appeal before the Court of Justice, seeking to have set aside the judgment of the General Court. In support of its appeal, the cancellation applicant raised two grounds of appeal alleging, respectively, infringement of Article 51(1)(a), read in conjunction with Article 51(2), of Regulation No 207/2009, and a procedural error on the part of the General Court.
- 13 On 19 September 2016 the EUTM proprietor filed a Declaration pursuant to Article 28 (8) of the Amending Regulation (EU) No 2015/2424 and which included Class 12 goods as mentioned in the alphabetical list.
- 14 On 6 October 2016, the Office acknowledged receipt of the Article 28(8) declaration.
- 15 On 16 February 2017, the Court of Justice dismissed the appeal in its entirety (16/02/2017, C-577/14 P, LAMBRETTA, EU:C:2017:122).
- 16 On 11 April 2017, the parties were informed that appeal R 2312/2010-1 had been reallocated to the Second Board of Appeal under the present case number R 453/2017-2.

Reasons

Scope of examination

- 17 The Office is required, under Article 65(6) EUTMR, to take the measures necessary to comply with the judgments of the European Union judicature. It is for the Office to draw the appropriate inferences from the operative part of the judgments of the European Union judicature as well as the grounds constituting their essential basis, in so far as they are necessary for the purposes of determining the exact meaning of what is stated in the operative part (see also 25/03/2009, T-402/07, Arcol II, EU:T:2009:85, § 21 to 23, confirmed by order 04/03/2010, C-193/09 P, Arcol II, EU:C:2010:121, § 55 and seq.; 13/04/2011, T - 262/09, First Defense Aerosol Pepper Projector, EU:T:2011:171, § 41-42).
- 18 It should be noted that the EUTM proprietor limited its action before the General Court against the Board's 2011 decision insofar as the First Board had dismissed the appeal in relation to the goods in Class 12.
- 19 It is in the light of the foregoing that the Second Board of Appeal (hereinafter 'the Board'), to which the case is reallocated, has to render a new decision. It can do so on the basis of the facts, arguments and evidence on file (and only on the basis of facts, arguments and evidence on file).

Revocation and proof of use

- 20 Pursuant to Article 51(1)(a) and (2) EUTMR, the rights of the proprietor of the [European Union] trade mark shall be declared to be revoked on application to the Office

- (a) if, within a continuous five-year period, the trade mark has not been put to genuine use in the [European Union] in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use; however, no person may claim that the proprietor's rights in an [EU] trade mark should be revoked where, during the interval between expiry of the five-year period and filing of the application or counterclaim, genuine use of the trade mark has been started or resumed; the commencement or resumption of use within a period of three months preceding the filing of the application or counterclaim which began at the earliest on expiry of the continuous period of five years of non-use shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application or counterclaim may be filed;
2. Where the grounds for revocation of rights exist in respect of only some of the goods or services for which the [EU] trade mark is registered, the rights of the proprietor shall be declared to be revoked in respect of those goods or services only.
- 21 Article 15(2) EUTMR states that use of the [European Union] trade mark with the consent of the proprietor shall be deemed to constitute use by the proprietor.
- 22 Under Rule 40(5), in conjunction with Rule 22(3) of Community Trade Mark Implementing Regulation (EC) No 2868/95, proof of use shall consist of indications concerning the place, time, extent and nature of use of the trade mark for the goods and services in respect of which it is registered. This enumeration is cumulative. In the absence of conclusive evidence with regard to one of these aspects, the evidence furnished must be considered insufficient to demonstrate genuine use.
- 23 There is genuine use of a trade mark where the trade mark is used in accordance with its essential function, which is to guarantee the identity of the origin of the goods or services for which it is registered, in order to create or preserve an outlet for those goods or services; genuine use does not include token use for the sole purpose of preserving the rights conferred by the mark (11/03/2003, C-40/01, *Minimax*, EU:C:2003:145, § 43). The condition relating to genuine use of the trade mark furthermore requires that the trade mark be used publicly and outwardly (11/03/2003, C-40/01, *Minimax*, EU:C:2003:145, § 37; 08/07/2004, T-203/02, *Vitafruit*, EU:T:2004:225, § 39).
- 24 Use of the mark must relate to goods or services already marketed or about to be marketed and for which preparations by the undertaking to secure customers are under way, particularly in the form of advertising campaigns (11/03/2003, C - 40/01, *Minimax*, EU:C:2003:145, § 37).
- 25 When assessing whether use of the trade mark is genuine, regard must be taken of all the facts and circumstances relevant to establishing whether the commercial exploitation of the trade mark is real, particularly whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the trade mark, the nature of those goods or services, the characteristics of the market and the scale and frequency of

use of the trade mark (19/12/2012, C-149/11, Leno, EU:C:2012:816, § 29; 11/05/2006, C-416/04 P, Vitafruit, EU:C:2006:310, § 70 and 11/03/2003, C-40/01, Minimax, EU:C:2003:145, § 43).

- 26 As to the extent of the use made of the earlier trade mark, account must be taken, in particular, of the commercial volume of all the acts of use on the one hand and the duration of the period in which those acts of use occurred, and the frequency of those acts, on the other (08/07/2004, T-334/01, Hipoviton, EU:T:2004:223, § 35). Use of the mark need not always be quantitatively significant in order for it to be deemed genuine, and even minimal use can be sufficient, provided that it is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the trade mark (27/01/2004, C-259/02, Laboratoire de la mer, EU:C:2004:50, § 21).
- 27 However, the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the opposing party to produce additional evidence to dispel possible doubts as to its genuineness (08/07/2004, T-334/01, Hipoviton, EU:T:2004:223, § 37).
- 28 Furthermore, the volume of sales in relation to the period and frequency of use shall be deemed to be significant enough for it not to be concluded as being merely token, minimal or notional for the sole purpose of preserving the rights conferred by the mark (16/11/2011, T-308/06, Buffalo Milke, EU:T:2011:675, § 68).
- 29 In order to examine whether use of the trade mark is genuine, an overall assessment must be made taking account of all the relevant factors in the particular case (08/07/2004, T-334/01, Hipoviton, EU:T:2004:223, § 36).
- 30 Genuine use of a trade mark cannot be proven by means of probabilities or suppositions, but has to be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned (27/09/2007, T-418/03, La Mer, EU:T:2007:299, § 59).
- 31 It is common ground that the request for revocation was admissible since the EUTM had been registered for more than five years at the date of the filing of the request.
- 32 The Board's 2011 decision found correctly that the relevant period for assessing use of the EUTM is between 19 November 2002 and 18 November 2007 inclusive.
- 33 Notwithstanding the previous paragraph, it is to be added that the fact that a mark is not used for goods newly available on the market but for goods that were sold in the past does not mean that its use is not genuine, if the proprietor makes actual use of the same mark for, for example, component parts that are integral to the make-up or structure of such goods, or for goods or services directly connected with the goods previously sold and intended to meet the needs of customers of those goods (see (11/03/2003, C-40/01, Minimax, EU:C:2003:145, § 43 as well as the reference made thereto in 30/09/2014, T-51/12, LAMBRETTA, EU:T:2014:844, § 43-44).

- 34 As a result of the annulment of the contested decision, the Board will have to examine whether the EUTM proprietor has proven the use of the mark 'LAMBRETTA' in respect of spare parts for scooters in Class 12 (30/09/2014, T - 51/12, LAMBRETTA, EU:T:2014:844, in particular § 37-38).
- 35 However, the Board will first proceed to assess whether the EUTM proprietor has used its trade mark for spare parts for scooters at all, independently, at this stage, of the specific class(es) of the Nice Classification to which the various individual spare parts may belong and independently of whether the wording 'spare parts for scooters' as such - and which is not mentioned in the Class 12 alphabetical list (30/09/2014, T - 51/12, LAMBRETTA, EU:T:2014:844, 36) - would be sufficiently clear and precise for classification in one or more classes of the Nice Classification.
- 36 It is to be stressed that the burden of proof lies with the EUTM proprietor in accordance with Rule 40(5) CTMIR. Furthermore, the Board reiterates that it is not sufficient that genuine use of the trade mark appears probable or credible; actual proof of use must be given (18/01/2011, T-382/08, Vogue, EU:T:2011:9, § 40). Finally, in this respect, it is important to note that:
- (1) it is a well-known fact that it is common in the field of spare parts of land vehicles, including 'scooters', that third parties will use in the course of trade the trade mark of the 'land vehicle' to indicate the intended purpose of the product, namely to serve as a spare part for these scooters;
 - (2) the cancellation applicant argued and filed corroborating evidence before the Office that the EUTM proprietor's spare parts do not bear the contested trade mark.
- 37 Before the Cancellation Division and the First Board of Appeal the EUTM proprietor submitted admissible documents in order to prove genuine use of the contested mark for scooter spare parts.
- 38 Firstly, insofar as it does not follow otherwise from the operative part of the relevant 'LAMBRETTA' judgments and the grounds constituting their essential basis, this Board sees no reasons to deviate from the considerations as made in the Board's 2011 decision and in particular paragraphs 38-49 as well as paragraph 36 second sentence and paragraph 37 second sentence '...it cannot be excluded that the [EU]TM proprietor may have ceased to manufacture the scooters'.
- 39 In the context of the previous paragraph, the Board notes that insofar as the EUTM proprietor submitted an Italian Court decision and the Board is assumed to fully understand the English translation, this was done, as pointed out in the Board's 2011 decision (paragraph 16), in support of the EUTM proprietor's allegation that the application for revocation should be rejected on the basis of Article 56(3) EUTMR. The First Board correctly rejected this allegation (Board's 2011 decision, paragraph 17). Purely for completeness sake, the Board adds that even if it were to be allowed to go beyond the submissions of the parties (which should not be the case), the Board may take into account the reasoning of the Milan Court decision but it cannot be bound by it. It is to be stressed that the European Union trade mark regime is an autonomous system which applies

independently of any national system. The Board has to make its use assessment purely by reference to the EUTMR as interpreted by the European Union judicature. Bearing this in mind, as will follow from the Board's assessment hereunder, the appeal is to be dismissed.

- 40 Secondly, as to Article 15(2) EUTMR, the Board sees no reason to deviate from the finding of the Cancellation Division – and which was not rebutted with arguments by the cancellation applicant before the First Board of Appeal – that the totality of the evidence shows that the EUTM proprietor and ‘FWL’ have an established business relationship under which the latter is entitled to use the contested mark in the United Kingdom and the European Union, including the authorisation of sub-licensees (contested decision, paragraph 59). Thus use of the [European Union] trade mark by FWL is to be deemed to constitute use by the EUTM proprietor in accordance with Article 15(2) EUTMR.
- 41 As a side remark, insofar as the sub-license contracts concerning ‘vehicles’ are concerned, the Board has no reason to deviate from the Board's 2011 decision (see in particular paragraphs 43-49).
- 42 Thirdly, also with respect to Article 15(2) EUTMR, the Board has no reason to deviate from the finding of the Cancellation Division – and which was not rebutted with arguments by the EUTM proprietor before the First Board of Appeal – that such de facto consent [as mentioned with respect to FWL] does not apply to the settlement agreement involving the ‘Lambretta Club of Great Britain’ (contested decision paragraph 60-63).
- 43 As to Exhibit SDW6, showing allegedly use of the trade mark for spare parts, (see observations of 2 May 2008, Witness Statement page 3, point 8), this contains (see also paragraph 4, indent 7 above):

‘Copies from the magazine ‘Scootering’, showing a cover page, dated January 2004, showing a ‘Lambretta’ scooter; advertising pages, partly dated January 2004, containing advertising for the Lambretta Club, first and foremost giving its contact details. There are also other advertisements, among others, for spare parts for ‘Lambretta’ scooters, where the ‘Lambretta’ trade mark is shown, however with reference to a multitude of dealers rather than any of the parties involved in the present case. A second front cover of ‘Scootering’, dated October 2007, contains the text ‘Lambretta 60th anniversary’. Two advertising pages, seemingly relating to this issue, contain advertising for ‘Lambretta’ scooter spare parts offered for sale by Resurrection Scooters UK. Some of the spare parts dealers display a stamp ‘Lambretta Club Great Britain Super Dealer’. Moreover, the exhibit contains printouts from the web page www.lambretta.co.uk. This web page contains information on workshops and has links to online sales of spare parts for scooters, to auction sites for second hand scooters, etc. Finally, the exhibit contains excerpts from a web page seemingly produced by an entity known as ‘Cambridge Lambretta’. The web page excerpts are dated [15 February 2008]’.

- 44 In the light of the previous paragraph, it is important to explicitly mention here the following consideration (see contested decision, paragraph 61):

- ‘The reasoning by the GC in the Vitafruit case [08/07/2004, T-203/02, Vitafruit, EU:T:2004:225] that where a third party has filed evidence of use, prima facie it can be taken that there is consent of use, does not apply to the current situation. Firstly, the applicant has disputed the consent. Secondly, the submitted evidence of use consists of copies from a magazine. Since magazines are normally accessible to the public, the presumption of access to proof of use being limited to consenting parties does not apply. In situations like this, the onus is on the EUTM proprietor, or effectively its licensee, to prove the consent in question’.
- 45 The Board endorses this consideration in the contested decision as such and which also applies to the Internet extracts contained within exhibit SDW6. Furthermore, to the extent the EUTM proprietor did not rebut the finding of the Cancellation Division before the First Board, the Board considers that any possible use of the trade mark ‘Lambretta’ in these magazine and Internet extracts cannot be attributed to the EUTM proprietor.
- 46 Notwithstanding the previous paragraph, the magazine ‘Scootering’ in Exhibit SDW6 contained an entire page of ‘Scooter Restorations’. Before the First Board the EUTM proprietor alleged ‘...extensive export of goods, principally parts for LAMBRETTA 2-wheel vehicles in 2005 and 2006 to Scooters Restorations (see statement of grounds of 21 January 2011, page 4).
- 47 The Board considers that the corroborating evidence submitted before the First Board shows that in 2005 and 2006 the EUTM proprietor sold spare parts to Scooters Restorations.
- 48 However, firstly, the EUTM proprietor does not state nor show that these goods bear the contested mark, either on the goods themselves, their packages or otherwise. In fact, this important deficiency applies to the evidence as a whole with, at first sight, a possible exception concerning the use in a catalogue. This possible exception, at first sight, will be discussed later in the decision.
- 49 Secondly, the cancellation applicant submitted in reply to the appeal statement of grounds, a statement from the Managing Director of Scooter Restorations which mentions, amongst others, the following (see observations of 15 May 2011, handwritten page 30/52):
- ‘The scooter parts are dispatched to my customers both trade and retail in the United Kingdom and around the world (...).
- One of my spare part suppliers is Scooter India Limited (SIL) in Lucknow, India, from which I have bought spare parts from the last 20 years. (...)
- The spare parts that I purchase from SIL are sold as replacement 2-wheel spare parts to fit a variety of Lambretta models and are branded as ‘Scooters India Limited original spares’ and do not necessarily relate to the Lambretta trade mark specifically. (...)
- To the best of my knowledge, SIL supplies SIL-branded replacement parts for a number of Lambretta scooter models and has not shown interest to actively use (directly or via licensees) the Lambretta trademark for spare parts. In the last ten

years, I have not received any spare parts, which have been branded under the name Lambretta. To the best of my knowledge, the last Lambretta scooter SIL produced was in 1997.

In recent years a new 2-wheel scooter has been marketed in Italy as a 'Lambretta Pato', which was not related to SIL'.

- 50 The Board cannot ignore the high probative value of this declaration insofar as it concerns the purchase of the spare parts by Scooter Restorations from the EUTM proprietor. Moreover, a declaration made by an expert in the field has also probative value and cannot be ignored with respect to the sale of scooter spare parts to be used for 'Lambretta' scooters, or scooters as such, in, at least, the United Kingdom.
- 51 In short, the evidence as contained in Exhibit SDW 6 in combination with the supplementary evidence in this respect cannot demonstrate use of the trade mark 'Lambretta' for (scooter) spare parts in the United Kingdom or in the European Union.
- 52 For completeness sake, and which does not mean that the Board is not convinced of the above, the Board makes the following remarks.
- 53 Firstly, even to the extent that the Board were to err in stating that the possible use of the trade mark 'Lambretta' in these magazine and Internet extracts cannot be attributed to the EUTM proprietor, this evidence does not demonstrate that the trade mark was used for spare parts instead of describing the purpose of these spare parts, namely that they serve as spare parts for 'Lambretta' scooters.
- 54 Secondly, the evidence as contained in Exhibit SDW 6 and insofar as it can be related to the EUTM proprietor can hardly suffice to prove the extent of use in the United Kingdom or the European Union.
- 55 The Board notes that in reply to the cancellation applicant's observations, the EUTM proprietor submitted further evidence to demonstrate genuine use of the contested mark for scooter spare parts.

Exhibit SDW 2.1.

- 56 Insofar as the Declaration made by S. D. Wilch, Finance director of FWL, dated June 2009, made further reference to a declaration dated 8 October 2008 from E. Sacchi. E. Sacchi is the owner of the website www.lambretta.it, a website specialised in information on the history and on events for owners, collectors and fans of the 'Lambretta' scooters. It is Mr Sacchi who declares to be '...aware of the fact that the Indian company Scooters India Limited produces and distributes worldwide, including the Italian territory, continuously since at least fifteen years, original spare parts for the 'Lambretta' scooters allowing the restoration, repair and conservation of them'.
- 57 Firstly, as to the reference in the aforesaid 'Sacchi' Declaration to 'original spare parts', this does not imply that these parts bear the contested mark; especially taking into account the Declaration of the Managing Director of

Scooter Restorations (see cancellation applicant's observations of 15 May 2011, handwritten page 30/52). The Board understands from the Declaration of the Managing Director of Scooter Restorations that the EUTM proprietor has the machines, tooling and technical drawings, originally owned and used by Innocenti (Italy) to produce the spare parts. In other words, the EUTM proprietor is able to make the original spare parts. However, as also follows from the same Declaration of May 2011, the Managing Director did not receive in the previous ten years any spare parts which have been branded under the name 'Lambretta'.

- 58 Secondly, the cancellation applicant submitted on 15 May 2011 a Declaration made by T. Sacchi which at the bottom mentions amongst others the same name (E. Sacchi), city and website as the aforesaid 8 October 2008 Declaration of E. Sacchi. In the Declaration of T. Sacchi it is mentioned amongst others that 'the production of these [spare] parts require dedicated equipment such as metal moulds and presses. SIL produce these replacement parts because they still have old Innocenti machines. The parts I receive from them do not imply that they should relate to the Lambretta brand or be original Lambretta parts. The replacement parts are generic and brandless, and shipped as such (...). I know for a fact that in the last thirty years no new Lambretta scooter has been put on the market by either SIL or Denny Kunman, Fine White Line or any parties that appear to be linked to them'.
- 59 In the Board's view the two 'Sacchi' Declarations – one submitted by the EUTM proprietor and one by the cancellation applicant - are compatible in the context of the above considerations. The EUTM proprietor produces scooter spare parts, by using the Innocenti machines, but does not brand them under the name 'Lambretta'; they are generic and brandless. If the Declarations were to be considered not compatible, it would raise serious doubts about the value of the two 'Sacchi' declarations and consequently the first Sacchi declaration would not demonstrate that what has to be demonstrated in the case at hand: use of the contested mark for scooter spare parts.
- 60 Insofar as Exhibit SDW 2-1 is '...accompanied by a number of copies from the website, featuring among others a page where spare parts are offered for sale, at a fixed price or by auction by external users of the website, the copies are dated 08/10/2008' (see contested decision, paragraph 47, indent 5), this does not give any indication of the opposite to that mentioned in the previous paragraph. Furthermore, as to the sale of 'Lambretta' scooters as such, it seems that the numerous second hand 'Lambretta' scooters for sale in this evidence (see the last document <http://www.lambretta.it/mercato.html> heading 'comprovendoscambio') are mostly from the 50s and 60s. Some are from the 70s and two seem to be from 1980 (or earlier). At least, the two from 1980 (or earlier) seem to be from the EUTM proprietor (see 'comprovendoscambio', page 4, 4th date mentioned and page 6, fourth date mentioned). However, it seems that the 1980 (or earlier) scooters are the most recently manufactured scooters offered for sale on that website.
- 61 Before dealing with the other evidence submitted in reply to the cancellation applicant's observations by the EUTM proprietor (Exhibit SDW 2-2), the Board

draws attention to the following consideration by the Cancellation Division (see contested decision, paragraph 73):

‘...in the statements made by Messrs Schiavio and Tessera, referred to in the submission by the applicant on 08/06/2009, neither of the persons in question denied that the [EU]TM proprietor had sold spare parts under the Lambretta trade mark in Italy since 1991. Their statements only referred to the non-use of the mark for such motorcycles...’

- 62 It is true that in both statements neither of the two persons denied that the EUTM proprietor had sold spare parts under the ‘Lambretta’ trade mark in Italy since 1991. However, they did not confirm either that the EUTM proprietor had sold spare parts under the ‘Lambretta’ trade mark in Italy since or before 1991. As also mentioned by the Cancellation Division, the statements only referred to the non-use of the contested mark for scooters since 1991 by ‘Scooters India Ltd, Fine White Line, Danny/Derry Kunman or any other organisation in connection thereof’ (see the observations of the cancellation applicant of 8 June 2009, Annexes 3 and 4).

Exhibit SDW 2-2

- 63 The Cancellation Division described this Exhibit as follows (see contested decision, paragraph 47, indent 6):

‘A copy of SIL’s catalogue for spare parts for ‘Lambretta’ scooters (...). The first page contains the name and logo of the [EU]TM proprietor. In the heading, the words ‘spares catalogue’ appear in English, Italian, French and German. The trade mark ‘Lambretta’ features together with cutaway drawings showing the various spare parts’.

- 64 As correctly pointed out by the Cancellation Division, the pages showing the images of various spare parts also show the mark ‘Lambretta’, not on the spare parts themselves, but as a title/heading at the top of the page.
- 65 Firstly, as shown by this representative image, the mark ‘Lambretta’ is not the only mark mentioned on these pages. These pages also always show the mark ‘Vijai’ (the front page of the catalogue, on the contrary, only refers to the trade mark Vijai). This use of the two marks on one page relating to the same spare parts does therefore not reduce the doubt that the spare parts may be generic and can be used both for ‘Lambretta’ and ‘Vijai’ scooters.
- 66 For completeness sake, if the Board were to err in its finding that the catalogue does not show any use of the contested mark for spare parts, it should be noted that the catalogue is undated. Thus, the catalogue cannot serve the purpose of demonstrating the use of the trade mark for spare parts within - or close to - the relevant time period. Furthermore, insofar as the catalogues are in French or German and there is no other evidence on file relating to any use in the territories other than Italy or the United Kingdom, it is not clear to which territory this applies. Insofar as the catalogues are in Italian and English they might, in combination with the other evidence, serve to indicate the relevant territories as Italy and the United Kingdom. However, apart from being deficient in the

indication of ‘time of use’, the catalogues cannot serve to demonstrate the extent of use in Italy or the United Kingdom.

- 67 As to the last two pages of Exhibit 2-2, they do not seem to form part of the catalogue but seem to be a separate advertisement of the ‘Lambretta’ scooter (the advertisement shows a ‘Lambretta scooter’, the technical characteristics and performance details and the name of the EUTM proprietor. Importantly, the extracts are undated. Furthermore, the extracts do not show use of the trade mark ‘LAMBRETTA’ for spare parts as such. Moreover, it is not clear to which territory this extract refers (on the last page it is mentioned specifically that the scooter passed the CPA regulation of the USA).

Evidence as a whole

- 68 In the light of all the foregoing and assessing the evidence as a whole, the EUTM proprietor did not prove use of the mark ‘LAMBRETTA’ for spare parts in Class 12 within (or outside) the relevant time period.
- 69 The Board adds that if purely for argument’s sake the evidence were to show use of the contested mark for spare parts, the evidence would still be deficient in respect of other issues, in particular, as also follows from the above assessment of use, regarding the time and extent of use.
- 70 Finally, it should be noted that the Court provided the Board with guidance as to the examination of whether or not the EUTM proprietor has used the mark ‘LAMBRETTA’ in connection with the Class 12 spare parts (30/09/2014, T-51/12, LAMBRETTA, EU:T:2014:844):

43 In the course of that examination, the Board of Appeal will, inter alia, have to determine whether that use satisfies the criteria set out by the Court of Justice in its judgment in Case C-40/01 Ansul [2003] ECR I-2439, paragraphs 40 to 43.

44 In particular, it will be necessary to examine, first, whether the applicant has actually marketed scooters under the mark ‘LAMBRETTA’ in the past, and not only in the period 19 November 2002 to 18 November 2007, and, secondly, whether the applicant actually marketed under the trade mark ‘LAMBRETTA’, in the period 19 November 2002 to 18 November 2007, either parts that were integral to the make-up or structure of the scooters previously sold or goods or services that were directly related to scooters and were intended to meet the needs of customers of those goods.

- 71 Firstly, purely for the sake of completeness in the light of the text of the previous paragraph, bearing in mind also the above assessment of the evidence, there is no reason for the Board to deviate from the Board’s 2011 decision which found that there is no evidence on file showing use of the mark ‘LAMBRETTA’ for ‘vehicles; apparatus for locomotion by land, (air or water)’ in the period 19 November 2002 to 18 November 2007. This also includes the non-use for ‘scooters’ within the relevant 5 year period.

- 72 Secondly, the issue of whether the EUTM proprietor has actually marketed scooters under the mark 'LAMBRETTA' in the past, that is before the relevant 5 year period, can only be relevant if the EUTM proprietor has actually marketed under the trade mark 'LAMBRETTA', in the relevant 5 year period, either parts that were integral to the make-up or structure of the scooters previously sold or goods or services that were directly related to scooters and were intended to meet the needs of customers of those goods.
- 73 As to the use of the (spare) parts mentioned in the previous paragraph, even though forming an integral part of the 'scooters', the EUTM proprietor did not demonstrate, as required, that the spare parts are sold under the same mark as the 'Lambretta' scooters. Thus this use of the spare parts cannot be considered use for scooters or other land vehicles (11/03/2003, C-40/01, Minimax, EU:C:2003:145, § 41, second sentence).
- 74 Insofar as reference is made to '...goods or services that were directly related to scooters'; it is to be stressed that the EUTM proprietor only submitted before the Office arguments concerning the 'spare parts'. Since it is not the Board's competence to go beyond the parties submissions, the Board cannot assess the use of, other than spare parts, '...goods or services that were directly related to scooters'. However, in the event the Board were to err in this approach and were competent to do so, the Board has not found any objective and solid evidence showing such use within the relevant time period, let alone 'genuine use' of these goods or services.

Conclusion

- 75 In light of the foregoing, the appeal as it is now before the Board is dismissed.

Costs

- 76 Since the cancellation applicant's appeal as filed against the Cancellation Division is partially successful and partially not successful, each party must bear its own costs.

Order

On those grounds,

THE BOARD

hereby:

- 1. Dismisses the appeal;**
- 2. Orders each party to bear its own costs.**

According to Article 6 of
Commission Regulation
(EC) No 216/96

Signed

H. Salmi

Signed

H. Salmi

According to Article 6 of
Commission Regulation
(EC) No 216/96

Signed

H. Salmi

Registrar:

Signed

H.Dijkema

