

5. Fifth plea in law, alleging that the EDPB violated Article 83 GDPR and various underlying principles governing the determination of fines under the GDPR.

Action brought on 10 March 2023 — Nike Innovate v EUIPO — Puma (FOOTWARE)

(Case T-130/23)

(2023/C 155/90)

Language in which the application was lodged: English

Parties

Applicant: Nike Innovate CV (Beaverton, Oregon, United States) (represented by: J.-C. Rebling, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Puma SE (Herzogenaurach, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant before the General Court

Trade mark at issue: European Union word mark FOOTWARE — European Union trade mark No 18 035 847

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 9 January 2023 in Case R 2173/2021-5

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- uphold the decision of the EUIPO Cancellation Division to maintain the registration in its entirety;
- order EUIPO to pay the Applicant's costs.

Pleas in law

- The Board of Appeal infringed and misapplied Article 59(1)(a) in conjunction with Article 7(1)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by misinterpreting the nature of a suitable characteristic that can fall foul of this provision;
- The Board of Appeal infringed and misapplied Article 59(1)(a) in conjunction with Article 7(1)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by not considering the varying ways in which the mark would be perceived in relation to the broad scope of individual goods and services covered by the registration;
- The Board of Appeal infringed and misapplied Article 59(1)(a) in conjunction with Article 7(1)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by not considering properly how the mark would be perceived in relation to the goods by different consumer groups with different knowledge of the English language and how that linguistic understanding would impact on their perception of the mark;
- The Board of Appeal misapplied Article 95(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council and infringed Article 27(4) of Commission Delegated Regulation (EU) 2018/625;

- The Board of Appeal infringed Article 95(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Order of the General Court of 9 March 2023 — Aitana v EUIPO

(Case T-355/22) ⁽¹⁾

(2023/C 155/91)

Language of the case: Spanish

The President of the Ninth Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 303, 8.8.2022.
