

Action brought on 23 April 2023 — Azienda Agricola F.lli Buccalletti v EUIPO — Sunservice (Poles for supporting plants)

(Case T-210/23)

(2023/C 216/68)

Language in which the application was lodged: Italian

Parties

Applicant: Azienda Agricola F.lli Buccalletti Srl (Castiglion Fiorentino, Italy) (represented by: A. Pagani, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Sunservice Srl (Castiglione del Lago, Italy)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Other party to the proceedings before the Board of Appeal

Design at issue: Community design (Poles for supporting plants) — Community design No 8 262 364-0001

Proceedings before EUIPO: Invalidity proceedings

Contested decision: Decision of the Third Board of Appeal of EUIPO of 20 February 2023 in Case R 370/2022-3

Form of order sought

The applicant claims that the Court should:

- annul the contested decision and, consequently, also rectify the decision of the Invalidity Division of 20 January 2019 (invalidity proceedings No ICD 115 222) by declaring Community design No 8 262 364-0001 invalid;
- order the hearing of witness evidence and any investigation or other appropriate on-site assessment in order to ascertain from third parties (experts and/or technicians) appointed by the Court (i) the status of the supports relied upon in the documents from the applicant and (ii) the similarities between the poles used to make them and those that are the subject of the Community design which the applicant is seeking to have declared invalid;
- order Sunservice Srl to pay the costs incurred in all stages of the proceedings.

Pleas in law

- Misapplication of the criteria for assessing the evidence adduced by the applicant;
- Misapplication or failure to apply Article 7(1) of Council Regulation (EC) No 6/2002 and, in any event, failure to acknowledge or failure to acknowledge properly the probative value of the evidence adduced by the applicant to establish the disclosure referred to in Article 7(1) of Council Regulation (EC) No 6/2002;
- Misapplication of or failure to apply the criteria for assessing the requirement for novelty referred to in Article 5 of Council Regulation No 6/2002;
- Misapplication of or failure to apply the criteria for assessing the requirement for individual character referred to in Article 6 of Council Regulation (EC) No 6/2002, either because the Board of Appeal failed to acknowledge or failed to acknowledge properly that the shape would be identified by an informed user or because the 'model against model' criteria were misapplied or were not applied.