



C/2023/226

23.10.2023

Action brought on 9 September 2023 — Jopp — Pol Eksport — Import Ryszard Jopp — Krzysztof Jopp v EUIPO — SmarTT (Furniture legs)

(Case T-554/23)

(C/2023/226)

Language in which the application was lodged: Polish

Parties

Applicant: Przedsiębiorstwo produkcyjno — usługowo — handlowe Jopp — Pol Eksport — Import Ryszard Jopp — Krzysztof Jopp sp.j. (Ryczywół, Poland) (represented by: A. Korbela, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party: SmarTT sp. z o.o. (Kobielice, Poland)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant

Design at issue: Community design for furniture legs — Community design No 3 844 620-0001

Proceedings before EUIPO: Invalidity proceedings

Contested decision: Decision of the Third Board of Appeal of EUIPO of 26 June 2023 in Case R 367/2022-3

Form of order sought

The applicant claims that the Court should:

- annul the decision of the Third Board of Appeal of EUIPO of 26 June 2023 in Case R 367/2022-3, declaring invalid RCD 003844620-0001;
- annul the decision (preceding the abovementioned decision) of the Invalidity Division of 12 January 2022, issued in Case No ICD 114 423, declaring invalid the abovementioned RCD 003844620-0001;
- refer back to EUIPO the examination of the application of 4 December 2020 seeking that the registration of RCD 003844620-0001 be declared invalid, lodged by SmarTT Spółka z o. o.;
- require EUIPO to take the necessary measures to comply with the obligation under Article 61(6) of Council Regulation No 6/2002 of 12 December 2001 on Community designs, including:
 - (a) correctly defining the term ‘informed user’, which may be a professional or a consumer but not a person who has never bought the goods to which the protected design applies and for which it is used;
 - (b) not favouring entities using unfair commercial practices;
 - (c) refraining from using as proof of disclosure ineligible material, the nature of which does not allow for comparison with the design at issue;
- order EUIPO to pay the costs of the proceedings.

Pleas in law

- Infringement of the Treaty establishing the European Community, which states that the aim of its establishment is to ensure ‘fair competition’;
- Infringement of Article 3(a) and (c), Article 4(2)(a) and (b), Article 4(2), Article 5(1), Article 7(1), Article 25(1)(b), read in conjunction with Article 6(1), Article 59, Article 62, Article 65 and Article 68 of Council Regulation (EC) No 6/2002.