

Pleas in law and main arguments

Registered Community design in respect of which a declaration of invalidity has been sought: Community design No 000593959/0001 (Radiators for heating)

Proprietor of the Community design: The applicant

Applicant for the declaration of invalidity of the Community design: The Heating Company BVBA

Grounds for the application for a declaration of invalidity: The contested Community design does not meet the requirements laid down in Articles 4 to 9 of the Community Designs Regulation (CDR), since it lacks distinctive characteristics when compared with German design No 5 covered by the multiple registration No 401 10481.8, published upon application by The Heating Company BVBA and valid in France, Italy and the Benelux as international design No DM/060899

Decision of the Cancellation Division: To declare the Community design invalid

Decision of the Board of Appeal: To annul the contested decision and declare the Community design invalid

Pleas in law: The individual character of Community design No 000593959-0001

Action brought on 11 February 2011 — Antrax It v OHIM — Heating Company (Radiators for heating)

(Case T-84/11)

(2011/C 113/34)

Language in which the application was lodged: Italian

Parties

Applicant: Antrax It Srl (Resana, Italy) (represented by: L. Gazzola, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Other party to the proceedings before the Board of Appeal: Heating Company BVBA (The) (Dilsen, Belgium)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Third Board of Appeal of OHIM of 2 November 2010, in so far as it declared Community design N° 000593959-0002 invalid;

— annul the decision of the Third Board of Appeal of OHIM of 2 November 2010 in so far as it ordered Antrax It Srl to pay the costs incurred by The Heating Company BVBA in the proceedings before OHIM;

— order OHIM and The Heating Company to pay Antrax It Srl the costs, dues and legal fees relating to the present proceedings, together with any additional sums required by law;

— order The Heating Company BVBA to pay Antrax It Srl the costs, dues and legal fees incurred by the latter in the proceedings before OHIM, together with any additional sums required by law.

Pleas in law and main arguments

Registered Community design in respect of which a declaration of invalidity has been sought: Community design N° 000593959-0002 (radiators for heating)

Proprietor of the Community design: The applicant

Applicant for the declaration of invalidity of the Community design: The Heating Company BVBA

Grounds for the application for a declaration of invalidity: The contested Community design does not meet the requirements laid down in Articles 4 to 9 of the Community Designs Regulation (CDR), being almost identical to the German design N° 4 covered by the multiple registration N° 401 10481.8, published on 10 September 2002, and valid in France, Italy and Benelux as international design N° DM/0608899

Decision of the Cancellation Division: To declare the Community design invalid

Decision of the Board of Appeal: To annul the contested decision and declare the Community design invalid

Pleas in law: The individual character of Community design N° 000593959-0002.

Action brought on 16 February 2011 — Nanu-Nana Joachim Hoepp v OHIM — Vincci Hoteles (NANU)

(Case T-89/11)

(2011/C 113/35)

Language in which the application was lodged: English

Parties

Applicant: Nanu-Nana Joachim Hoepp GmbH & Co. KG (Bremen, Germany) (represented by: A. Nordemann, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Vincii Hoteles S.A. (Alcobendas, Spain)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 November 2010 in case R 641/2010-1;

— Order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'NANU', for goods and services in classes 3, 4, 6, 16, 18, 20, 21, 24, 26 and 35 — Community trade mark application No 6218879

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Community trade mark registration No 5238704 of the word mark 'NAMMU', for goods and services in classes 3, 32 and 44

Decision of the Opposition Division: Partly upheld the opposition and consequently partly rejected the Community trade mark application for goods and services in classes 3, 4, 16, 21 and 35 and rejected the opposition for goods and services in classes 6, 9, 16, 18, 20, 21, 24, 26 and 35

Decision of the Board of Appeal: Annulled in part the decision of the Opposition Division and rejected the opposition for goods in classes 4, 16 and 21 and dismissed the appeal for the remainder and confirms the rejection of the Community trade mark application for goods and services in classes 3, 21 and 35

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assessed that there was likelihood of confusion on the part of the relevant public.

Action brought on 21 February 2011 — Chimei InnoLux v Commission

(Case T-91/11)

(2011/C 113/36)

Language of the case: English

Parties

Applicant: Chimei InnoLux Corp. (Zhunan, Taiwan), (represented by: J.-F. Bellis, lawyer and R. Burton, Solicitor)

Defendant: European Commission

Form of order sought

— annul Commission Decision C(2010) 8761 final of 8 December 2010 in Case COMP/39.309 — LCD — Liquid Crystal Displays insofar as it finds that the infringement extended to LCD panels for TV applications;

— reduce the amount of the fine imposed upon the applicant in the decision; and

— order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging the Commission applied a legally flawed concept, the concept of so-called 'direct EEA sales through transformed products', in determining the relevant value of sales for the calculation of the fine.

In calculating the relevant value of sales of the applicant for the purpose of the determination of the fine, the Commission counted the value of LCD panels incorporated in finished IT or TV products sold by the applicant in the EEA. The applicant submits that this concept of 'direct EEA sales through transformed products' is legally unsound and cannot be used for the determination of the relevant value of sales. The applicant submits that the concept relies on sales of products to which the infringement does not directly or indirectly relate and artificially shifts the location of relevant intra-group sales of LCD panels from outside the EEA to within the EEA and *vice versa* depending upon the location of sale of the finished products into which such LCD panels are incorporated. As such, the applicant submits that the concept is inconsistent with the past case-law of the EU courts dealing, among others, with the treatment of intra-group sales for the calculation of the fine. Finally, the applicant submits that the concept as applied by the Commission in the decision leads to discrimination between the addressees of the decision illegally based on the mere form of their respective corporate structures.

2. Second plea in law, alleging that the Commission violated Article 101 TFEU and Article 53 of the EEA Agreement in finding that the infringement extended to LCD panels for TV applications.