

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of Appeal of 28 November 2012 (R 108/2012-4) insofar as the appeal was upheld and the CTM applied for was rejected;
- Order the defendant to pay the cost of the proceedings;
- Order the intervener to pay the costs of the proceedings before the Office for Harmonisation.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'AC', for goods and services in classes 9, 14, 18, 25 and 35 — Community trade mark application No 9 070 021

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: German trademarks No 30 666 076 and No 30 666 074 and International trade mark registration No 948 259 designating several Member States of the European Union of the figurative mark 'AC ANNE CHRISTINE', for goods and services in classes 3, 9, 14, 18, 25 and 35; Community trade mark No 6 904 783, for goods in classes 3, 9, 14 and 25; Community trademark No 6 905 541 for goods in classes 3, 14 and 25

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Upheld the appeal partly and annulled the contested decision with respect goods and services of classes 9, 14, 18, 25 and 35, rejected the CTM applied for these goods and services and rejected the appeal for the remainder

Pleas in law: Infringement of Articles 8(1)(b), 15 and 42(2) of Council Regulation No 207/2009.

Action brought on 5 February 2013 — Three-N-Products Private v OHIM — Munindra Holding (AYUR)

(Case T-63/13)

(2013/C 101/52)

Language in which the application was lodged: French

Parties

Applicant: Three-N-Products Private Ltd (New Delhi, India) (represented by: M. Thewes and T. Chevrier, lawyers)

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

Other party to the proceedings before the Board of Appeal: Munindra Holding BV (Lelystad, Netherlands)

Form of order sought

The applicant claims that the Court should:

- annul Decision R 2296/2011-4 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 November 2012;
- in the alternative, annul the contested decision as regards the 'consultancy services in the field of herbal remedies, nutrition, health and beauty care', in Class 44;
- order OHIM and the other party to the proceedings before the Board of Appeal to pay the costs incurred in the proceedings before the General Court and before the Board of Appeal of OHIM.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'AYUR' for goods and services in Classes 3, 5, 16 and 44 — Community trade mark No 5 429 469

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity of the Community trade mark: Munindra Holding BV

Grounds for the application for a declaration of invalidity: Registered Benelux word mark 'AYUS' for goods and services in Classes 3, 5, 29, 30 and 31

Decision of the Cancellation Division: Application upheld in part

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 53(1)(a) and of Article 8(1)(b) of Regulation No 207/2009

Action brought on 1 February 2013 — Novartis Europharm v Commission

(Case T-67/13)

(2013/C 101/53)

Language of the case: English

Parties

Applicant: Novartis Europharm Ltd (Horsham, United Kingdom) (represented by: C. Schoonderbeek, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the European Commission C(2012) 8605 final of 19 November 2012 to grant a marketing authorisation to Hospira UK Ltd, in accordance with Article 3 of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1); and
- Order the European Commission to pay its own costs and those of the applicant.

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law, alleging that the contested decision is unlawful in that it constitutes an infringement of the data protection rights of Novartis Europharm Ltd. for its product Aclasta pursuant to Articles 13(4) of Regulation (EC) No. 2309/93 ⁽¹⁾, read in conjunction with Article 89 of Regulation (EC) No. 726/2004 ⁽²⁾. As Aclasta was granted a separate independent marketing authorisation through the centralised procedure the Aclasta authorisation does not fall under the same global marketing authorisation as Zometa (another product of Novartis Europharm Ltd) specified in article 6(1) of Directive 2001/83 ⁽³⁾ for the purposes of data protection.

In addition, the contested Decision is also unlawful in that it constitutes an infringement of Article 10(1) of Directive 2001/83/EC as data protection for the reference medicinal product Aclasta has not expired and hence the conditions for granting a marketing authorisation under this article have not been complied with.

⁽¹⁾ Council Regulation (EEC) No 2309/93 of 22 July 1993 laying down Community procedures for the authorization and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products

⁽²⁾ Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (Text with EEA relevance)

⁽³⁾ Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use

Action brought on 7 February 2013 — Anapurna/OHIM — Annapurna (ANNAPURNA)

(Case T-71/13)

(2013/C 101/54)

Language in which the application was lodged: English

Parties

Applicant: Anapurna GmbH (Berlin, Germany) (represented by: P. Ehrlinger and T. Hagen, lawyers)

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

Other party to the proceedings before the Board of Appeal: Annapurna SpA (Prato, Italy)

Form of order sought

The applicant claims that the Court should:

- Set aside the contested decision of the Fifth Board of Appeal of OHMI of 3 December 2012, inasmuch as it upheld the registration of Community trademark No 001368166 'ANNAPURNA', and did not declare it null and void, for the goods 'bags' (class 18), 'bed covers and bed linen' (class 24) and 'articles of clothing, headgear, slippers' (class 25);
- Order the intervening party to pay the costs of the proceedings including the costs incurred during the course of the appeal proceedings;
- Request the defendant to produce the evidence of use ('Exhibits') submitted by the intervening party within the framework of the nullity proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: The word mark 'ANNAPURNA' for goods in classes 3, 18, 24 and 25 — Community trade mark application No 1 368 166

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

Party applying for revocation of the Community trade mark: The applicant

Decision of the Cancellation Division: Revoked the Community trade mark in part