

Mark or sign cited in opposition: Community trade mark registrations and United Kingdom trade mark registrations of the word mark ‘SO...?’ *et al.*, for goods in classes 3 and 25

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Annulled the contested decision and rejected the CTM application with respect to all goods claimed in classes 3 and 25

Pleas in law: Infringement of Article 8 (1)(b) and (5) of CTMR.

Action brought on 28 June 2013 — Out of the blue/OHIM — Dubois *et al.* (FUNNY BANDS)

(Case T-344/13)

(2013/C 260/77)

Language in which the application was lodged: English

Parties

Applicant: Out of the blue KG (Lilienthal, Germany) (represented by: G. Hasselblatt and D. Kipping, lawyers)

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

Other party to the proceedings before the Board of Appeal: Frédéric Dubois *et al.* (Lasne, Belgium)

Form of order sought

The applicant claims that the Court should:

- Overturn the Decision of the Second Board of Appeal of 4 April 2013, Case R 542/2012-2;
- Order OHIM to bear its own costs as well as the costs of the applicant;
- In the event that Mr. DUBOIS joins in these proceedings as an intervening party, order the intervening party to bear its own costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The word mark containing the word element ‘FUNNY BANDS’ for goods and services in classes 14, 17 and 35 — Community trade mark application No 9 350 794

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: German non-registered sign ‘FUNNY BANDS’ several goods and services and activities

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(4) of Council Regulation No 207/2009.

Action brought on 4 July 2013 — Zentralverband des Deutschen Bäckerhandwerks *v* Commission

(Case T-354/13)

(2013/C 260/78)

Language of the case: German

Parties

Applicant: Zentralverband des Deutschen Bäckerhandwerks e.V. (Berlin, Germany) (represented by: I. Jung, M. Teworte-Vey, A. Renvert and J. T. Saatkamp, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul the defendant’s decision of 8 April 2013 in the cases ‘Kołocz śląski/Kołacz śląski’ — Schlesischer Streuselkuchen (Ref. Ares [2013] 619104 — 10 April 2013).

Pleas in law and main arguments

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

1. First plea in law: incorrect legal basis

- The applicant claims that the defendant erred in law in basing its decision concerning the applicant’s request for cancellation of the registration of ‘Kołocz śląski/Kołacz śląski’ as a protected geographical indication on the new version of Regulation (EU) No 1151/2012, ⁽¹⁾ in force at the time of the defendant’s decision, instead of on the old Regulation (EC) No 510/2006, ⁽²⁾ in force at the time when the applicant submitted its request. The defendant thereby infringed the principle of *tempus regit actum*.