

2. Second plea in law, alleging breach of essential procedural requirements

In this plea, the applicant claims that the contested decision infringes essential procedural requirements. In that connection, the applicant states that, in the light of Article 41(2)(c) of the Charter of Fundamental Rights of the European Union, the requirements of the obligation to state reasons laid down in Article 296(2) TFEU are set high and that the recitals in the preamble to the contested decision of the defendant do not satisfy the requirements laid down by the European Court of Justice.

3. Third plea in law, alleging breach of substantive law

In this plea, the applicant alleges breach of substantive law, since, as a result of its inadequate statement of reasons, the contested decision infringes the applicant's right to access to documents pursuant to Article 42 of the Charter of Fundamental Rights of the European Union and Article 15(3) TFEU. Moreover, the refusal of access is disproportionate.

- (¹) 2011/342/EU: Decision of the European Central Bank of 9 May 2011 amending Decision ECB/2004/3 on public access to European Central Bank documents (ECB/2011/6) (OJ 2011 L 158, p. 37).
 (²) 2004/258/EC: Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3) (OJ 2004 L 80, p. 42).

Action brought on 17 July 2013 — ultra air GmbH v OHIM — Donaldson Filtration Deutschland (ultra.air ultrafilter)

(Case T-377/13)

(2013/C 260/87)

Language in which the application was lodged: German

Parties

Applicant: ultra air GmbH (Hilden, Germany) (represented by: C. König, Rechtsanwalt)

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

Other party to the proceedings before the Board of Appeal: Donaldson Filtration Deutschland GmbH

Form of order sought

The Applicant claims that the Court should:

- Set aside the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 May 2013 in Case R 1100/2011-4;

— Order OHIM, and Donaldson Filtration Deutschland GmbH should it participate in the proceedings, to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'ultra.air ultrafilter' for goods and services in Classes 7, 9, 11, 37 and 42 — Community trade mark No 7 480 585

Proprietor of the Community trade mark: Applicant

Applicant for the declaration of invalidity of the Community trade mark: Donaldson Filtration Deutschland GmbH

Grounds for the application for a declaration of invalidity: Absolute ground of invalidity under Article 52(1)(a) of Regulation No 207/2009

Decision of the Cancellation Division: Application for declaration of invalidity dismissed

Decision of the Board of Appeal: Appeal allowed; Community trade mark declared invalid

Pleas in law:

Infringement of Article 7(1)(c) of Regulation No 207/2009;

Infringement of Article 7(1)(b) of Regulation No 207/2009;

Infringement of Article 75(2) of Regulation No 207/2009;

Infringement of Article 75(1) of Regulation No 207/2009

Action brought on 23 July 2013 — Apple and Pear Australia and Star Fruits Diffusion v OHIM — Carolus C. (English pink)

(Case T-378/13)

(2013/C 260/88)

Language of the case: French

Parties

Applicants: Apple and Pear Australia Ltd (Victoria, Australia) and Star Fruits Diffusion (Caderousse, France) (represented by: T. de Haan and P. Péters, lawyers)

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

Other party to the proceedings before the Board of Appeal: Carolus C. BVBA (Nieuwerkerken, Belgium)

Form of order sought

- First, alter the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 May 2013 in Case R 1215/2011-4 to the effect that the action brought by the applicants before the Board of Appeal is well founded and, consequently, that the opposition filed by the applicants should be upheld;
- In the alternative, annul in its entirety the decision of the Fourth Board of Appeal of OHIM of 29 May 2013 in Case R 1215/2011-4; and
- Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Carolus C.

Community trade mark concerned: Word mark 'English pink' for goods in Class 31 — Application for Community trade mark No 8 610 768

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

Mark or sign cited in opposition: Word mark 'PINK LADY' and figurative marks containing the word elements 'Pink lady' for goods in Classes 16, 29, 30, 31 and 32

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law:

- Infringement of the principle of *res judicata*;
- Infringement of the general principles of legal certainty, sound administration and protection of legitimate expectations;
- Infringement of Article 75 of Regulation No 207/2009;
- Infringement of Article 76 of Regulation No 207/2009;
- Infringement of Article 8(1)(b) of Regulation No 207/2009;
- Infringement of Article 8(5) of Regulation No 207/2009.

Action brought on 22 July 2013 — Innovation First/OHIM (NANO)

(Case T-379/13)

(2013/C 260/89)

Language of the case: English

Parties

Applicant: Innovation First, Inc. (Greenville, United States) (represented by: J. Zecher, lawyer)

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

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the First Board of Appeal of the defendant of April 19, 2013 in the matter R 1271/2012-1;
- Order the defendant to pay the costs of the proceedings, including the cost of the appeal proceeding before the defendant.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'NANO' for goods and services in classes 9, 28 and 41 — Community trade mark application No 9 157 421

Decision of the Examiner: Rejected the CTM application

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 75 and 37(3) of Council Regulation No 207/2009, Rule 50(2)(h) of Regulation No 2868/95 and Articles 76 and 7(1)(b) and (c) of Council Regulation No 207/2009.

Action brought on 26 July 2013 — Intermark/OHIM — Coca-Cola (RIENERGY Cola)

(Case T-384/13)

(2013/C 260/90)

Language in which the application was lodged: English

Parties

Applicant: Intermark Srl (Steiu, Romania) (represented by: Á. László, lawyer)

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

Other party to the proceedings before the Board of Appeal: The Coca-Cola Company (Atlanta, United States)

Form of order sought

The applicant claims that the Court should:

- Uphold the application, alter the contested decision of the defendant, order the dismissal of the opposition and order the registration of the applicant's sign as a trade mark in its entirety;