

Action brought on 30 June 2008 — Rath v OHIM — Portela & Ca. (DIACOR)

(Case T-258/08)

(2008/C 223/95)

Language in which the application was lodged: English

Parties

Applicant: Matthias Rath (Cape Town, South Africa) (represented by: U. Vogt, C. Kleiner and S. Ziegler, lawyers)

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

Other party to the proceedings before the Board of Appeal: Portela & Ca., SA (Mamede do Coronado, Portugal)

Form of order sought

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 April 2008 in case R 1630/2006-2; and
- Order the defendant and, if the case may be, the other party to the proceedings before the Board of Appeal to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'DIACOR' for goods and services in classes 5, 16 and 41

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: Portuguese trade mark registration No 137 311 of the mark 'DIACOL' for goods in class 79, in accordance with the national classification of goods in force at the time of registration

Decision of the Opposition Division: Upholding of the opposition for all the contested goods in class 5

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: (i) Infringement of Article 22(6) of Commission Regulation No 2868/95 ⁽¹⁾ as several documents submitted by the other party to the proceedings before the Board of Appeal were not in English and no translation had been provided to the applicant in order to assess the content of the evidence of use; (ii) Infringement of Article 43(2) and (3) of Council Regulation No 40/94 as the Board of Appeal erred in its opinion that the

other party to the proceedings before it had submitted sufficient evidence for the proof of use of the earlier mark in Portugal for all the goods for which it has been registered; and (iii) Infringement of Article 8(1) of Council Regulation No 40/94 as the conflicting trade marks show no visual, phonetic or conceptual similarities, such as to trigger a likelihood of confusion.

⁽¹⁾ Regulation (EC) No 2868/1995 of the Commission of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 3 July 2008 — Indo Internacional v OHIM — Visual (VISUAL MAP)

(Case T-260/08)

(2008/C 223/96)

Language in which the application was lodged: English

Parties

Applicant: Indo Internacional, SA (Sant Cugat del Vallès, Spain) (represented by: X. Fàbrega Sabaté and M. Curell Aguilà, lawyers)

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

Other party to the proceedings before the Board of Appeal: Visual SA (Saint Apollinaire, France)

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 15 April 2008 in case R 700/2007-1; and
- Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'VISUAL MAP' for services in class 44 — application No 393 2936

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: French trade mark registration No 043 303 854 of the word mark 'VISUAL' for services in class 44

Decision of the Opposition Division: Rejection of the Community trade mark application in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1) of Council Regulation No 40/94 as there is no likelihood of confusion between the conflicting trade marks.

Action brought on 8 July 2008 — Canon Communications v OHIM — Messe Düsseldorf (MEDTEC)

(Case T-262/08)

(2008/C 223/97)

Language in which the application was lodged: English

Parties

Applicant: Canon Communications LLC (Los Angeles, United States) (represented by: M. Mak, lawyer)

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

Other party to the proceedings before the Board of Appeal: Messe Düsseldorf GmbH (Düsseldorf, Germany)

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 30 April 2008 in case R 817/2005-1; and
- Order the defendant/the other party to the proceedings before the Board of Appeal to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'MEDTEC' for goods and services in classes 16, 35 and 41

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: German trade mark registration No 39 975 563 of the word mark 'Metec' for goods and services in classes 16, 35 and 41; international trade mark registration No 752 637 of the word mark 'Metec' for goods and services in classes 16, 35 and 41

Decision of the Opposition Division: Upheld the opposition with respect to all the contested goods and services

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The decision of the Board of Appeal should be annulled on the ground that there is a considerable chance that the national trade marks cited in the opposition proceedings are void; alternatively, infringement of Article 8(1) of Council Regulation No 40/94 as there is no similarity between the services concerned and therefore no likelihood of confusion between the conflicting trade marks, or, in the alternative, that the services concerned are not sufficiently similar to conclude that there is a likelihood of confusion. In the alternative, it should be established that the Board of Appeal erred in not considering the fact that the public concerned is highly specialised and will therefore not confuse the conflicting trade marks. Finally, as an alternative plea in law, it should be established that the Board of Appeal erred in not taking into account the fact that the other party to the proceedings before the Board of Appeal tolerated the use of the Community trade mark concerned by the applicant for more than five years.

Action brought on 7 July 2008 — Becker Flugfunkwerk v OHIM — Harman Becker Automotive Systems (BECKER AVIONIC SYSTEMS)

(Case T-263/08)

(2008/C 223/98)

Language in which the application was lodged: English

Parties

Applicant: Becker Flugfunkwerk GmbH (Rheinmünster, Germany) (represented by: O. Griebenow, lawyer)

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

Other party to the proceedings before the Board of Appeal: Harman Becker Automotive Systems GmbH (Karlsbad, Germany)