

Action brought on 8 February 2012 — Chen v OHIM — AM Denmark (Cleaning devices)

(Case T-55/12)

(2012/C 133/53)

Language in which the application was lodged: English

Parties

Applicant: Su-Shan Chen (Sanchong, Taiwan) (represented by: C. Onken, lawyer)

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

Other party to the proceedings before the Board of Appeal: AM Denmark A/S (Kokkedal, Denmark)

Form of order sought

— Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 October 2011 in case R 2179/2010-3; and

— Order OHIM and the other party to the proceedings before the Board of Appeal to bear the costs.

Pleas in law and main arguments

Registered Community design in respect of which a declaration of invalidity has been sought: A design for the product 'cleaning devices' — registered Community design No 1027718-0001

Proprietor of the Community design: The applicant

Applicant for the declaration of invalidity of the Community design: The other party to the proceedings before the Board of Appeal

Grounds for the application for a declaration of invalidity: The other party to the proceedings before the Board of Appeal requested the invalidation of the RCD based on Articles 4 to 9 and Article 25(1)(e) of Council Regulation No 6/2002; three-dimensional Community trade mark registration No 5185079, for goods in classes 3 and 21

Decision of the Invalidity Division: Declared the contested RCD invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 25(1)(e) of Council Regulation No 6/2002, as the Board of Appeal wrongly assumed that the earlier Community trade mark was used in the contested Community design. Besides, the Board of Appeal did not have to presume that the earlier trade mark possessed

at least a minimum degree of distinctiveness necessary for its registrability. Infringement of Article 9(1)(b) of Council Regulation No 207/2009, as the Board of Appeal did not correctly apply this Article. Indeed, contrary to the view taken by OHIM, Article 9(1)(b) CTMR does not confer on other party before the OHIM the right to prohibit the use of the contested Community design, as there is no likelihood of confusion. In particular, the applicant's Community design and the trade mark of the other party are not so similar as to account for a likelihood of confusion.

Action brought on 2 March 2012 — Hellenic Republic v Commission

(Case T-105/12)

(2012/C 133/54)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: K. Samoni and N. Dafniou)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— grant the application for annulment;

— annul the contested decision of the Commission;

— order the Commission to pay the costs.

Pleas in law and main arguments

By its action, the Hellenic Republic seeks the annulment (under Article 263 TFEU) of Commission Decision 1472708 of 3 January 2012 'relating to continued payment by the Hellenic Republic of the daily penalty payment of EUR 31 536 for each day of delay in implementing the measures necessary to comply with the judgment of the Court of Justice of the European Union in Case C-65/05', in so far as making of the penalty payment is sought from 22 August 2011 onwards. Under the aforementioned contested decision, given that, according to the Commission, the Hellenic Republic appears not to have undertaken the necessary measures to comply with the judgment of the Court of Justice in Case C-65/05 and subsequently its second judgment in Case C-109/08, the Hellenic Republic is called upon to pay the sum of EUR 4 825 008 as a penalty payment for the period from 1 July 2011 until 30 November 2011.