

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been sought: The word mark 'LAMBRETTA', for goods in classes 6, 7 and 28 — Community trade mark registration No 1618982

Proprietor of the Community trade mark: The applicant

Party applying for revocation of the Community trade mark: The other party to the proceedings before the Board of Appeal

Grounds for the application for revocation: The party grounded its request pursuant to Article 51(1)(a) of Council Regulation (EC) No 207/2009

Decision of the Cancellation Division: Revoked the CTM registration

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: It is submitted that the Board of Appeal erred in three respects in its assessment of the evidence under Article 51(1)(c). Had the Board of Appeal correctly applied the authorities in Case T-415/09 Vallis v New Yorker and/or La Mer Technology Inc v Laboratoires Goemar SA (Case C-259/02) and/or reviewed the evidence it would have held that there was genuine use of goods in classes 6 and 7 with the consent of SIL.

Action brought on 26 March 2012 — Ben Ali v Council

(Case T-133/12)

(2012/C 165/43)

Language of the case: French

Parties

Applicant: Mehdi Ben Tijani Ben Haj Hamda Ben Haj Hassen Ben Ali (Saint-Étienne-du-Rouvray, France) (represented by: A. de Saint Remy, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

- adopt a measure of organisation of procedure, under Article 64 of the General Court's Rules of Procedure, to ensure that the Commission discloses 'all documents relating to the adoption' of the contested regulation;
- annul the contested regulation in so far as it concerns the applicant;
- order the Council of the European Union to pay the applicant an overall sum of EUR 50 000 in compensation for all forms of damage;

— order the Council of the European Union to pay the applicant a sum of EUR 7 500 for legal expenses in support of the application, in accordance with Article 91 of the Rules of Procedure, as recoverable costs;

— order the Council of the European Union to pay the costs.

Pleas in law and main arguments

By his application, the applicant seeks (i) the annulment of Council Decision 2012/50/CFSP of 27 January 2012 amending Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia ⁽¹⁾ and (ii) damages in respect of the loss which he considers to have suffered.

In support of the action, the applicant relies on seven pleas in law which are, in essence, identical or similar to those raised in Case T-301/11 *Ben Ali v Council*. ⁽²⁾

⁽¹⁾ OJ 2012 L 27, p. 11.

⁽²⁾ OJ 2011 C226, p. 29.

Action brought on 28 March 2012 — Wehmeyer v OHIM — Cluett, Peabody (Fairfield)

(Case T-139/12)

(2012/C 165/44)

Language in which the application was lodged: English

Parties

Applicant: Wehmeyer GmbH & Co. KG (Aachen, Germany) (represented by: C. Weil, lawyer)

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

Other party to the proceedings before the Board of Appeal: Cluett, Peabody & Co. Inc. (New York, United States)

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 19 January 2012 in case R 2509/2010-1;
- Dismiss the opposition filed by the other party to the proceedings before the Board of Appeal to the application for registration of the Community trade mark 'Fairfield'; and
- Order OHIM and the other party to the proceedings before the Board of Appeal to pay the costs, including those incurred by the applicant before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'Fairfield', for goods in classes 3, 14, 18 and 25 — Community trade mark application No 6294342

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: Community trade mark registration No 3079481 of the figurative mark 'FAIRFIELD BY ARROW', for goods in class 25

Decision of the Opposition Division: Partly rejected the contested trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly found that there was a likelihood of confusion between the two trademarks.

Action brought on 28 March 2012 — Teva Pharma and Teva Pharmaceuticals Europe v EMA

(Case T-140/12)

(2012/C 165/45)

Language of the case: English

Parties

Applicants: Teva Pharma BV (Utrecht, Netherlands) and Teva Pharmaceuticals Europe BV (Utrecht, Netherlands) (represented by: D. Anderson, QC (Queen's Counsel), K. Bacon, Barrister, G. Morgan and C. Drew, Solicitors)

Defendant: European Medicines Agency

Form of order sought

— Annul the decision of the European Medicines Agency, contained in its letter of 24 January 2012, refusing to validate the applicants' application for a marketing authorisation;

— Order the Commission to pay the applicants' costs.

Pleas in law and main arguments

In support of the action, the applicants rely on one plea in law, alleging that the refusal to validate their application for the authorisation of a generic version of an orphan medicinal product is contrary to Article 8 of Regulation (EC) No 141/2000⁽¹⁾ properly interpreted. In particular, it is contrary to the wording and effect of Article 8, as well as the policy underlying the said regulation and its *travaux préparatoires*, to

exclude a generic version of an orphan medicinal product from the market for more than the ten year period stipulated in Article 8(1) of the said regulation. The applicants further allege that Article 8(3) permits an authorisation for a similar product to be granted during that 10 year period, by way of derogation from Article 8(1), in certain specified circumstances. Such authorisation should not, however, have the effect of extending the 10 year market exclusivity for the first orphan product.

⁽¹⁾ Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products (OJ 2000 L 18, p. 1)

Action brought on 26 March 2012 — Pro-Duo v OHIM — El Corte Inglés (GO!)

(Case T-141/12)

(2012/C 165/46)

Language in which the application was lodged: English

Parties

Applicant: Pro-Duo (Ghent, Belgium) (represented by: T. Alkin, Barrister)

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

Other party to the proceedings before the Board of Appeal: El Corte Inglés, SA (Madrid, Spain)

Form of order sought

— Suspend the action pending the outcome of the Cancellation proceedings No 5011 C;

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 January 2012 in case R 1373/2011-4, insofar as it declined to suspend proceedings pending outcome of the Cancellation proceedings, or to annul the decision entirely; and

— Order the Opponent to pay the costs incurred by the applicant.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark in black, white and grey 'GO!', for goods in class 3 — Community trade mark application No 8859712