



Reports of Cases

Judgment of the General Court (Fourth Chamber) of 28 November 2013 — Vitaminaqua v OHIM — Energy Brands (vitaminaqua)

(Case T-410/12)

(Community trade mark — Opposition proceedings — Application for the Community figurative mark vitaminaqua — Earlier national word marks VITAMINWATER — Earlier Community figurative mark GLACEAU vitamin water — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

1. *Community trade mark — Appeals procedure — Action before the EU judicature — Jurisdiction of the General Court — Power to issue directions — None (Council Regulation No 207/2009, Art. 65(6)) (see para. 16)*
2. *Community trade mark — Appeals procedure — Action before the EU judicature — Jurisdiction of the General Court — Amendment of a decision by the Office — Assessment having regard to the competences conferred on the Board of Appeal (Council Regulation No 207/2009, Art. 65(3)) (see para. 17)*
3. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Assessment of the likelihood of confusion — Criteria (Council Regulation No 207/2009, Art. 8(1)(b)) (see paras 24, 25, 42)*
4. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Similarity of the marks concerned — Criteria for assessment (Council Regulation No 207/2009, Art. 8(1)(b)) (see paras 26, 27, 46, 73)*
5. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Figurative mark vitaminaqua — Word mark VITAMINWATER and figurative mark GLACEAU vitamin water (Council Regulation No 207/2009, Art. 8(1)(b)) (see paras 29, 30, 43, 60, 61, 65-70, 82-84)*

6. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Weak distinctive character of the earlier mark — Relevance (Council Regulation No 207/2009, Art. 8(1)(b)) (see paras 37, 39, 52)*

Re:

ACTION brought against the decision of the First Board of Appeal of OHIM of 26 June 2012 (Case R 997/2011-1) relating to opposition proceedings between Energy Brands Inc. and Vitaminaqua Ltd.

Operative part

The Court:

1. Dismisses the action;
2. Orders Vitaminaqua Ltd to pay the costs.