



Reports of Cases

Judgment of the General Court (Eighth Chamber) of 16 November 2017 – Nanogate v EUIPO (metals)

(Case T-767/16)

(European Union trade mark — Application for EU figurative mark metals — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001))

1. *EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Marks composed exclusively of signs or indications capable of designating the characteristics of a product or service – Aim – Need to preserve availability*

(Council Regulation No 207/2009, Art. 7(1)(c))

(see para. 20)

2. *EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Marks composed exclusively of signs or indications capable of designating the characteristics of a product or service – Assessment of the descriptive nature of a sign – Criteria*

(Council Regulation No 207/2009, Art. 7(1)(c))

(see paras 21-24)

3. *Judicial proceedings – Application initiating proceedings – Formal requirements – Brief summary of the pleas in law on which the application is based – General reference to other documents not annexed to the application – Inadmissibility*

(Statute of the Court of Justice, Art. 21, first para.; Rules of Procedure of the General Court, Art. 177(1)(d))

(see paras 31, 32, 56)

4. *EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Marks devoid of any distinctive character – Assessment of distinctive character*

(Council Regulation No 207/2009, Art. 7(1)(c))

(see para. 40)

5. *EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Marks composed exclusively of signs or indications capable of designating the characteristics of a product or service – Figurative mark metals*

(Council Regulation No 207/2009, Art. 7(1)(c))

(see paras 34-46)

6. *EU trade mark – Decisions of the Office – Principle of equal treatment – Principle of sound administration – EUIPO's previous decision-making practice – Principle of legality – Need for a strict and complete examination in each particular case*

(Council Regulation No 207/2009)

(see paras 48-52)

7. *EU trade mark – Appeals procedure – Action before the EU judicature – Jurisdiction of the General Court – Review of the lawfulness of decisions of the Boards of Appeal – Re-examination of the facts in the light of evidence not previously submitted before EUIPO bodies – Not included*

(Council Regulation No 207/2009, Art. 65(2))

(see para. 53)

8. *EU trade mark – Definition and acquisition of the EU trade mark – Assessment of the registrability of a sign – EU rules only taken into account – Earlier registration of the mark in certain Member States or third countries – Decisions not binding EU bodies*

(Council Regulation No 207/2009)

(see para. 57)

Re:

ACTION brought against the decision of the Fifth Board of Appeal of EUIPO of 29 August 2016 (Case R 2361/2015-5) concerning an application for registration of figurative sign metals as an EU trade mark.

Operative part

The Court:

1. Dismisses the action;

2. Orders Nanogate AG to pay the costs.