

Proprietor of the mark or sign cited in the opposition proceedings: Union Investment Privatfonds GmbH, previously Union Investment Gesellschaft GmbH.

Mark or sign cited in opposition: German word marks 'UNIFONDS' (No 991.995) and 'UNIRAK' (No 991.997) and German figurative mark 'UNIZINS' (No 2.016.954), to distinguish capital investments, as referred to in Class 36.

Decision of the Opposition Division: Opposition partially upheld, in so far as a likelihood of confusion is recognised 'only as regards services found to be similar'.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: The contested decision wrongly applied the theory of increased protection for so-called marks in a series, developed by the Court of First Instance in its judgment of 23 February 2006 in Case T-194/03 concerning the trade mark 'Bainbridge', because the two necessary conditions are not fulfilled: (a) the element common to the series of earlier marks must be distinctive; and (b) the earlier marks must be used and understood by the relevant public as signifying a multiplicity of products and/or services.

Action brought on 10 November 2006 — Reber v OHIM (Mozart)

(Case T-304/06)

(2006/C 326/131)

Language in which the application was lodged: German

Parties

Applicant: Paul Reber GmbH & Co. KG (Bad Reichenhall, Germany) (represented by: O. Spuhler, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Chocoladefabriken Lindt & Sprüngli AG (Kilchberg, Switzerland)

Form of order sought

The applicant claims that the Court should:

- annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 8 September 2006 in appeal case R 97/2005-2;
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'Mozart' for goods in Class 30 (Community trade mark No 21 071).

Proprietor of the Community trade mark: The applicant.

Applicant for the declaration of invalidity: Chocoladefabriken Lindt & Sprüngli AG.

Decision of the Cancellation Division: Declaration of invalidity of the Community trade mark concerned.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of the duty under Article 73 of Regulation (EC) No 40/94 ⁽¹⁾ to state the reasons on which a decision is based, infringement by the Office of its duty under Article 74 (1) of Regulation No 40/94 to examine the facts of its own motion, infringement of the principle of good faith and infringement of Article 7(1)(c) of Regulation No 40/94.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 13 November 2006 — Air Products and Chemicals v OHIM — Messer Group (FERROMIX)

(Case T-305/06)

(2006/C 326/132)

Language in which the application was lodged: English

Parties

Applicant: Air Products and Chemicals Inc. (Allentown, USA) (represented by: S. Heurung, lawyer)

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

Other party to the proceedings before the Board of Appeal: Messer Group GmbH (Sulzbach, Germany)

Form of order sought

- Annul the decision of 12 September 2006 of the Second Board of Appeal of OHIM in joined Cases R 1270/2005-2 and R 1408/2005-2;
- reject the contested application for registration of the trade mark 'FERROMIX' CTM 3 190 063 in its entirety;
- send the decision of the Court of First Instance to OHIM;
- order Messer Group to pay all the costs and expenses.