

Pleas in law and main arguments

Applicant for the Community trade mark: Messer Group GmbH

Community trade mark concerned: The word mark 'FERROMIX' for goods in classes 1 and 4 — application No 3 190 063

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: The Community word mark 'FERROMAXX' for goods in class 1

Decision of the Opposition Division: Opposition upheld in respect of all goods in class 1; opposition rejected in respect of all goods in class 4

Decision of the Board of Appeal: Appeal brought by the applicant (R 1270/2005-2) dismissed; appeal brought by Messer Group GmbH (R 1408/2005-2) upheld

Pleas in law: Violation of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal among others:

- overestimated the knowledge and awareness of non professional consumers of welding gas;
- erroneously assumed that the trade mark 'FERROMAXX' was inherently weak;
- did not pay sufficient attention to the fact that the goods in question are partially identical, partially highly similar; and
- failed to consider the overall impression of the marks as a whole.

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

(Case T-306/06)

(2006/C 326/133)

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 1226/2005-2 and R 1398/2005-2;
- reject the contested application for registration of the trade mark 'INOMIX' CTM 3 190 031 in its entirety;
- send the decision of the Court of First Instance to OHIM;
- order Messer Group to pay all the costs and expenses.

Pleas in law and main arguments

Applicant for the Community trade mark: Messer Group GmbH

Community trade mark concerned: The word mark 'INOMIX' for goods in classes 1 and 4 — application No 3 190 031

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: The Community word mark 'INOMAXX' for goods in class 1

Decision of the Opposition Division: Opposition upheld in respect of all goods in class 1; opposition rejected in respect of all goods in class 4

Decision of the Board of Appeal: Appeal brought by the applicant (R 1226/2005-2) dismissed; appeal brought by Messer Group GmbH (R 1398/2005-2) upheld

Pleas in law: Violation of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal among others:

- overestimated the knowledge and awareness of non professional consumers of welding gas;
 - erroneously assumed that the trade mark 'INOMAXX' was inherently weak;
 - did not pay sufficient attention to the fact that the goods in question are partially identical, partially highly similar; and
 - failed to consider the overall impression of the marks as a whole.
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