

Mark or sign cited in opposition: The word mark 'EPIGRAN' originally registered for goods in Classes 1, 3 and 5 and now registered only for goods in Class 3 (Community trade mark No 560 292), albeit that the opposition was brought solely against the registration in Class 5

Decision of the Opposition Division: Opposition granted, partial refusal to register

Decision of the Board of Appeal: Partial annulment of the decision of the Opposition Division

Pleas in law: The contested decision infringes Article 8(1)(b) of Regulation No 40/94 ⁽¹⁾ as there is no likelihood of confusion between the marks in opposition.

⁽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 December 2006 — Rath v OHIM — Grandel (Epican)

(Case T-374/06)

(2007/C 42/46)

Language in which the application was lodged: German

Parties

Applicant: Matthias Rath (Cape Town, South Africa) (represented by: S. Ziegler, C. Kleiner and F. Dehn, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Dr. Grandel GmbH

Form of order sought

The applicant claims that the Court should:

- set aside the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 5 October 2006 in so far as it refuses to allow the Community trade mark application in respect of the goods in Class 5 'food supplements not for medical purposes, mainly consisting of vitamins, amino acids, minerals and trace elements; dietetic substances not adapted for medical use, namely amino acids and trace elements; the aforesaid goods not for use as antiepileptics';
- order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'Epican' for goods in Classes 5, 30 and 32 (Application No 2 524 510)

Proprietor of the mark or sign cited in the opposition proceedings: Dr. Grandel GmbH

Mark or sign cited in opposition: The word mark 'EPIGRAN' originally registered for goods in Classes 1, 3 and 5 and now registered only for goods in Class 3 (Community trade mark No 560 292), albeit that the opposition was brought solely against the registration in Class 5

Decision of the Opposition Division: Opposition granted, partial refusal to register

Decision of the Board of Appeal: Partial annulment of the decision of the Opposition Division

Pleas in law: The contested decision infringes Article 8(1)(b) of Regulation No 40/94 ⁽¹⁾ as there is no likelihood of confusion between the marks in opposition.

⁽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 14 December 2006 — Viega v Commission

(Case T-375/06)

(2007/C 42/47)

Language of the case: German

Parties

Applicant: Viega GmbH & Co. KG (Attendorn, Germany) (represented by: J. Burrichter, T. Mäger and F.W. Bulst, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Declare Article 1(1) of the decision void, in so far as it finds an infringement by the applicant of Article 81(1) EC and Article 53(1) of the EEA Agreement;
- declare Article 2 of the decision void, in so far as it imposes a fine of EUR 54.29 million on the applicant;
- in the alternative, make an appropriate reduction in the fine imposed on the applicant in Article 2 of the decision;
- order the defendant to pay the costs.