

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'IXI' for goods in class 9 — application No 723 140

Proprietor of the mark or sign cited in the opposition proceedings: Jochen und Eckhard Klein GbR

Mark or sign cited: The Community word mark 'ixi' for goods in class 9

Decision of the Opposition Division: Opposition upheld for all the contested goods

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: The opponent did not adduce evidence of similarity between the respective goods; the Board of Appeal took an unduly broad view of the scope of protection of the earlier mark and failed to properly analyse the relevant factors governing the assessment of similarity of the respective goods. Furthermore, the Board of Appeal took the reasons for the applicant to select its mark into consideration, which the applicant submits is an irrelevant consideration.

Action brought on 9 March 2007 — SHS Polar Sistemas Informáticos v OHIM — Polaris Software Lab (POLARIS)

(Case T-79/07)

(2007/C 95/110)

Language in which the application was lodged: English

Parties

Applicant: SHS Polar Sistemas Informáticos, SL (Madrid, Spain) (represented by: C. Hernández Hernández, lawyer)

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

Other party to the proceedings before the Board of Appeal: Polaris Software Lab Ltd (Chennai, India)

Form of order sought

- That the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market dated 8 January 2007 in Case R 658/2006-2 be annulled;
- that OHIM bears its own cost and pays those incurred by the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: Polaris Software Lab Ltd

Community trade mark concerned: The figurative mark 'POLARIS' for goods and services in classes 9 and 42 — application No 3 267 713

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

Mark or sign cited: The Community word mark 'POLAR' for goods and services in classes 9, 38 and 42

Decision of the Opposition Division: Opposition upheld for all the contested goods in class 9

Decision of the Board of Appeal: Annulment of the Opposition Division's decision

Pleas in law: Violation of Article 8(1)(b) of Council Regulation No 40/94 as i) the earlier trade mark can be applied to software destined to a non-specialist consumer, which could give rise to a confusion, ii) the small visual and phonetic differences between the two conflicting trade marks do not suffice to avoid a likelihood of confusion and iii) both marks are connected to the same meaning.

Action brought on 15 March 2007 — JanSport Apparel v OHIM (BUILT TO RESIST)

(Case T-80/07)

(2007/C 95/111)

Language of the case: English

Parties

Applicant: JanSport Apparel Corp. (Wilmington, USA) (represented by: C. Bercial Arias, C. Casalonga, K. Dimidjian-Lecompte, lawyers)

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

Form of order sought

- Annul the contested decision R 1090/2006-2 of the Second Board of Appeal, dated 12 January 2007, partially refusing the registration of CTM Application No 2937522 BUILT TO RESIST for the following goods: