

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'PTR PROFESSIONAL TENNIS REGISTRY' for goods and services in classes 16, 25 and 41 — application No 2 826 709

Proprietor of the mark or sign cited in the opposition proceedings: Registro Profesional de Tenis, SL

Mark or sign cited: The national figurative marks 'RPT Registro Profesional de Tenis, S.L' and 'RPT European Registry of Professional Tennis' for services in class 41

Decision of the Opposition Division: Rejection of the opposition in its entirety

Decision of the Board of Appeal: Partial annulment of the Opposition Division's decision and rejection of the trade mark application for the products and services in classes 16 and 41

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal concluded that there was confusing similarity between the applicant's Community trade mark application and Registro Profesional de Tenis' earlier trade marks. The Board of Appeal failed to give proper consideration to the principles to be applied where the trade marks in issue are complex marks.

Action brought on 8 May 2007 — Opus Arte UK v OHMI — Arte (OPUS ARTE)

(Case T-170/07)

(2007/C 170/56)

Language in which the application was lodged: English

Parties

Applicant: Opus Arte UK Ltd (Waldron, England) (represented by: D. McFarland, Barrister, and J.A. Alchin, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Arte G.E.I.E. (Strasbourg, France)

Form of order sought

The applicant requests the Court to:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade marks and Designs) of 8 March 2007 in Case R 733/2005-1; and

— order that the costs of the proceedings be borne by the defendant.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The Community figurative mark 'Opus Arte' for goods and services in Class 9, 16, 25 and 41 — Application No 2 551 778

Proprietor of the mark or sign cited in the opposition proceedings: ARTE G.E.I.E.

Mark or sign cited: The Community and national figurative and word marks containing the word 'ARTE' for goods and services in Classes 9, 16, 25 and 41 among other Classes not concerned by the proceedings

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Upheld the appeal limited to Class 41 for 'film and television production and distribution' services and allowed registration to proceed for the remaining goods and services applied for.

Pleas in law:

The applicant advances two pleas in law in support of its application.

On the basis of its first plea, the applicant submits that the contested decision violates Articles 73 and 74 of Council Regulation (EC) No 40/94 (hereinafter 'the CTMR'). According to the applicant, the Board should have neither refused to take into account relevant facts, evidence and arguments submitted by the applicant, nor based its decision on assumptions of facts not previously raised by either party or on vague and unsubstantiated allegations made by the opponent.

By its second plea, the applicant contends that the contested decision infringes Article 8(1)(b) CTMR in finding a likelihood of confusion between 'ARTE' and 'OPUS ARTE'. According to the applicant, such a finding could not be based on the arguable similarity of the marks, nor could it properly rebut the presumptions by the positive evidence of lack of confusion and the actual lack of any evidence of confusion and the peaceful co-existence of the marks in the market place in Europe.