

Action brought on 14 May 2007 — Avaya v OHMI — ZyXEL Communications (VANTAGE CNM)

(Case T-171/07)

(2007/C 170/57)

Language in which the application was lodged: English

Parties

Applicant: Avaya Inc. (Basking Ridge, USA) (represented by: A. Beschorner, B. Glaser, C. Thomas, lawyers)

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

Other party to the proceedings before the Board of Appeal: ZyXEL Communications Corp. (Hsin-Chu, Taiwan)

Form of order sought

- To annul the decision of the Second Board of Appeal No R 156/2006-2 of 14 March 2007 regarding Community trade mark application No 3 291 457 'VANTAGE CNM'; and
- to order the defendant to pay the costs incurred in the proceedings before the Court and to order the intervener to pay the costs of the administrative proceedings before the Board of Appeal.

Pleas in law and main arguments

Applicant for the Community trade mark: ZyXEL Communications Corp.

Community trade mark concerned: The Community figurative mark 'VANTAGE' for goods and services in Classes 9 and 42 — application No 3 291 457

Proprietor of the mark or sign cited in the opposition proceedings: Avaya Inc.

Mark or sign cited: The Community word mark 'MULTIVANTAGE' for goods and services in Classes 9, 38 and 42 — application No 2 409 589

Decision of the Opposition Division: Rejected in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant advances two different pleas in support of its application, namely, a breach of the principle of equal treatment and case-law consistency on the one hand, as well as the infringement of Article 8(1)(b) CTMR and the general principles of trade mark law on the other hand.

On the basis of its first plea, the applicant submits that the Board has departed from a previous decision rendered in a parallel case dealing with a nearly identical issue without giving any reasons for its sudden change in practice.

Furthermore, the applicant claims on the basis of its second plea, that the Board did not sufficiently consider the identity of the goods and services of the opposing marks as well as the high similarity of the marks themselves.

Action brought on 11 May 2007 — Atlantic Dawn and Others v Commission

(Case T-172/07)

(2007/C 170/58)

Language of the case: English

Parties

Applicants: Atlantic Dawn Ltd (Killybegs, Ireland), Antarctic Fishing Co. Ltd (Killybegs, Ireland), Atlantean Ltd (Killybegs, Ireland), Killybegs Fishing Enterprises Ltd (Killybegs, Ireland), Doyle Fishing Co. Ltd (Killybegs, Ireland), Western Seaboard Fishing Co. Ltd (Killybegs, Ireland), O'Shea Fishing Co. Ltd (Killybegs, Ireland), Aine Fishing Co. Ltd (Burtonport, Ireland), Brendelen Ltd (Lifford, Ireland), Cavankee Fishing Co. Ltd (Lifford, Ireland), Ocean Trawlers Ltd (Killybegs, Ireland), Eileen Oglesby (Burtonport, Ireland), Noel McGing (Killybegs, Ireland), Mullglen Ltd (Balbriggan, Ireland), Bradan Fishing Co. Ltd (Sligo, Ireland), Larry Murphy (Castletownbere, Ireland), Pauric Conneely (Claregalway, Ireland), Thomas Flaherty (Kilronan, Ireland), Carmarose Trawling Co. Ltd (Killybegs, Ireland), Colmcille Fishing Ltd (Killybegs, Ireland) (represented by: D. Barry, Solicitor, G. Hogan, SC, N. Travers and T. O'Sullivan, Barristers)

Defendant: Commission of the European Communities

Form of order sought

The applicants respectfully request the Court to:

- Annul Commission Regulation (EC) No 147/2007 of 15 February 2007 adapting certain fish quotas from 2007 to 2012 pursuant to Article 23(4) of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy; in the alternative
- annul Article 1 of and Annex I to Commission Regulation (EC) No 147/2007 of 15 February 2007 adapting certain fish quotas from 2007 to 2012 pursuant to Article 23(4) of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy in so far and to the extent that the said provisions reduce the quota allocated to Ireland for mackerel (*Scomber scombrus*) for the years 2007 to 2012;
- order the Commission to pay the costs of these proceedings.