

Pleas in law and main arguments

Community trade mark concerned: The word mark 'LIGHT & SPACE' for goods in class 2 — application No 5 147 756

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the Board of Appeal regarded the trade mark in question as if it were an advertising slogan, indication of quality or incitement to purchase without considering whether the trade mark could also be an indication of origin.

Furthermore, the Board of Appeal erred in its examination of the trade mark as a whole and in its examination of its component parts and committed an error of law by requiring that the trade mark combines words that are unusual or out of the ordinary in relation to the goods in question in order to acquire distinctive character.

Finally the Board of Appeal did not assess distinctiveness in relation to the specific goods applied for.

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

Mark or sign cited in opposition: Community figurative mark No 51.037 (the letter V against a white background), for goods in class 9 (Apparatus for checking and supervising).

Decision of the Opposition Division: Opposition upheld and application for a Community mark for goods in class 9 rejected.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark.

Action brought on 29 January 2007 — Vitro Corporativo v OHIM — VALLON (V)

(Case T-229/07)

(2007/C 199/81)

Language in which the application was lodged: Spanish

Parties

Applicant: Vitro Corporativo, S.A. de C.V. (represented by: J. Botella Reyna, lawyer)

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

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

Form of order sought

— order that the subject matter of the action be registered as a Community trade mark to distinguish goods in class 9.

Pleas in law and main arguments

Applicant for a Community trade mark: Vitro Corporativo, S.A. de C.V.

Community trade mark concerned: Figurative mark consisting of a letter 'V' (application No 2.669.513) for goods and services in classes 1, 7, 8, 9, 11, 12, 16, 17, 19, 20, 21, 22, 27, 30, 35, 39, 40, 41, 42 and 43.

Action brought on 2 July 2007 — Laboratorios Del Dr. Esteve v OHIM — Ester C (ESTER-E)

(Case T-230/07)

(2007/C 199/82)

Language in which the application was lodged: English

Parties

Applicant: Laboratorios Del Dr. Esteve, SA (Barcelona, Spain) (represented by: K. Manhaeve, lawyer)

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

Other party to the proceedings before the Board of Appeal: Ester C Company (Prescott, United States)

Form of order sought

— Annul the decision of the Second Board of Appeal R 737/2006-2 of 17 April 2007;

— order the defendant and — if applicable — Ester C Company to pay all the costs (jointly and severally).

Pleas in law and main arguments

Applicant for the Community trade mark: The Ester C Company

Community trade mark concerned: The Community word mark 'ESTER-E' for goods and services in Class 3 and 5 — application No 3163946

Proprietor of the mark or sign cited in the opposition proceedings: Laboratorios Del Dr. Esteve SA

Mark or sign cited: The Community figurative mark 'ESTEVE' for goods in Class 1, 5 and 42 and the national figurative mark 'ESTEVE' and 'ESTEVE-LABORATORIO DEL DR. ESTEVE S.A.' for goods in Class 5