

Pleas in law: The applicant claims that the contested decision infringes Article 43 CTMR and Rule 22 CTMIR since the justification of the First Board of Appeal, which held that the non-use of the national trademark 'LEVELINA' was justified for a certain type of pharmaceutical products and preparations, cannot constitute a 'proper reason' for non-use in the sense of Article 43(2) CTMR. Moreover, the applicant contends that even if the Court were to consider that the finding of the Board was correct and that non-use was sufficiently justified, the contested decision allegedly infringes Article 8(1)(b) CTMR.

Action brought on 23 July 2007 — ecoblue v OHIM — BBVA (Ecoblue)

(Case T-281/07)

(2007/C 235/27)

Language in which the application was lodged: German

Parties

Applicant: ecoblue AG (Munich, Germany) (represented by: C. Osterrieth and T. Schmitz, 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: Banco Bilbao Vizcaya Argentaria, SA

Form of order sought

- annul the decision of the First Board of Appeal of OHIM of 25 April 2007 in Case No R 844/2006-1;
- reject the opposition filed by Banco Bilbao Vizcaya Argentaria, S.A. against the 'Ecoblue' word mark applied for;
- order the defendant 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 'Ecoblue' for services in Classes 35, 36 and 38 (application No 2 871 598).

Proprietor of the mark or sign cited in the opposition proceedings: Banco Bilbao Vizcaya Argentaria, SA.

Mark or sign cited in opposition: The word marks 'BLUE' (Community trade mark No 1 345 974), 'BLUE JOVEN' (Community

trade mark No 2 065 100), 'BLUE BBVA' (Community trade mark No 2 065 621), 'TARJETA BLUE BBVA' (Community trade mark No 2 277 291), 'QNTAME BLUE' (Community trade mark No 2 391 878), 'HIPOTECA BLUE' (Community trade mark No 2 392 181), 'HIPOTECA BLUE JOVEN' (Community trade mark No 2 794 998) and 'MOTOR BLUE JOVEN' (Community trade mark No 3 060 878).

Decision of the Opposition Division: Opposition upheld and application for registration rejected.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 ⁽¹⁾, since the opposing marks are not similar and there is therefore no likelihood of confusion.

⁽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 24 July 2007 — Tailor v OHIM (Gesäßtasche links)

(Case T-282/07)

(2007/C 235/28)

Language of the case: German

Parties

Applicant: Tom Tailor GmbH (Hamburg, Germany) (represented by: S.O. Gillert, K. Vanden Bossche and F. Schiwiek, lawyers)

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

Form of order sought

- annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 May 2007 (Case R 669/2006-1);
- order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The figurative mark 'Gesäßtasche links' for goods in Class 25 (Application No 4 287 751).