

Pleas in law: Infringement of Article 8(1)(b) CTMR

The applicant claims that the contested decision is inconsistent with Article 8(1)(b) CTMR insofar as the Board held there was no likelihood of confusion between the conflicting marks, due to a lack of similarity of the signs concerned.

Decision of the Board of Appeal: Appeal upheld and decision appealed annulled.

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

⁽¹⁾ Council Regulation No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994, L 11, p. 1).

Action brought on 1 August 2007 — Viñedos y Bodegas Príncipe Alfonso de Hohenlohe v OHIM — Byass (ALFONSO)

(Case T-291/07)

(2007/C 235/34)

Language in which the application was lodged: Spanish

Parties

Applicant: Viñedos y Bodegas Príncipe Alfonso de Hohenlohe (Cenicero, Spain) (represented by: M Lobato García-Miján and B. Díaz de Escauriaza, 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: González Byass, S. A.

Form of order sought

- Annul the decision of the Second Board of Appeal of the Office of 29 May 2007 upholding the appeal brought by GONZÁLEZ BYASS, S.A. against the decision of the Opposition Division of 6 July 2007 which upheld the opposition filed by the applicant against the application for the Community trade mark ALFONSO;
- Order the Office to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: GONZÁLEZ BYASS, S.A.

Community trade mark concerned: Word mark 'ALFONSO' (application for registration No 3398278) for goods in Classes 30 (vinegars), 32 (beers, mineral and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices, syrups and other preparations for making beverages) and 33 (sheries).

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

Mark or sign cited in opposition: Community and national word marks 'PRÍNCIPE ALFONSO', for goods in Class 33.

Decision of the Opposition Division: Opposition in relation to 'sheries' upheld and application for registration for those goods refused.

Action brought on 27 July 2007 — Stepek v OHIM — Masters Golf Company (GOLF-FASHION MASTERS THE CHOICE TO WIN)

(Case T-294/07)

(2007/C 235/35)

Language in which the application was lodged: German

Parties

Applicant: Wilhelm Stepek (Stadl-Paura, Austria) (represented by: H. Heigl, W. Berger and G. Lehner, 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: The Masters Golf Company Ltd.

Form of order sought

- acknowledgement that the First Board of Appeal of the Office for Harmonisation in the Internal Market was wrong to adopt the decision of 23 May 2007 in Case R 95/2007-1;
- annulment of the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 23 May 2007 in Case R 95/2007-1;
- an order that The Masters Golf Company Ltd pays the applicant the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Wilhelm Stepek.

Community trade mark concerned: The figurative mark 'GOLF-FASHION MASTERS THE CHOICE TO WIN' for goods in Classes 3, 9, 12, 18, 24, 25 and 28 (application No 3 136 041).

Proprietor of the mark or sign cited in the opposition proceedings: The Masters Golf Company Ltd.