

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal dismissed.

Plea in law: Infringement of Article 1(b) of Regulation (EC) No 40/94 ⁽¹⁾ since there is no likelihood of confusion between the conflicting marks.

⁽¹⁾ Council Regulation No 40/94 of 20 December 1991 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 1 August 2008 — Hoo Hing v OHIM — Tresplains Investments (Golden Elephant Brand)

(Case T-300/08)

(2008/C 247/41)

Language in which the application was lodged: English

Parties

Applicant: Hoo Hing Holdings Ltd (Romford, United Kingdom) (represented by: M. Edenborough, Barrister)

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

Other party to the proceedings before the Board of Appeal: Tresplains Investments Ltd (Hong Kong, China)

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 7 May 2008 in case R 889/2007-1, in respect of the finding that Article 51(1)(a) of Council Regulation No 40/94 ground of objection was inadmissible;
- Alternatively, alter the decision of the First Board of Appeal of the OHIM of 7 May 2008 in case R 889/2007-1 such that Article 51(1)(a) of Council Regulation No 40/94 ground of objection is held to be admissible and well founded;
- Alter the decision of the First Board of Appeal of the OHIM of 7 May 2008 in case R 889/2007-1 such that Article 51(1)(b) of Council Regulation No 40/94 ground of objection is held to be admissible and well founded;
- Provided that the decision of the First Board of Appeal of the OHIM of 7 May 2008 in case R 889/2007-1 is altered as requested, alter further the same decision so that Community trade mark No 241 810 is declared invalid on either or both of these additional grounds as appropriate; and
- Order OHIM or the other party to the proceedings before the Board of Appeal, to pay the costs. Alternatively, order

OHIM and the other party to the proceedings before the Board of Appeal to pay the costs jointly and severally.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark 'Golden Elephant Brand' for goods in class 30 — Community trade mark registration No 241 810

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The unregistered figurative mark 'GOLDEN ELEPHANT', which had been in use in the United Kingdom

Decision of the Cancellation Division: Rejection of the application for a declaration of invalidity

Decision of the Board of Appeal: Annulment of the decision of the Cancellation Division

Pleas in law: The Board of Appeal erred when it held that the allegation based upon Article 51(1)(a) of Council Regulation No 40/94 was inadmissible, as well as when it failed to find that the objection to registration based upon Article 51(1)(b) of Council Regulation No 40/94 was admissible and well founded.

Action brought on 6 August 2008 — Laura Ashley v OHIM — Tiziana Bucci (LAURA ASHLEY)

(Case T-301/08)

(2008/C 247/42)

Language in which the application was lodged: English

Parties

Applicant: Laura Ashley Ltd (London, United Kingdom) (represented by: J. Guise, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Tiziana Bucci (Viareggio, Italy)

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 28 May 2008 in case R 1237/2007-1 and reject the opposition; and
- Order the defendant to pay the costs.