

First, the decision infringes the principle of strict interpretation and application of the exception. The Commission has not demonstrated any actual foreseeable and not merely hypothetical risk of detriment to the interests protected.

Secondly, the contested decision is inconsistent with the principles of law of effective compensation for infringements of EC competition law, as the interest of the injured parties in the details of the infringement is to be valued more highly than the interest of the undertakings in not disclosing to the public the details of the infringement alleged by the Commission and the scope of its cooperation with the Commission within the framework of the leniency notice.

Thirdly, the contested decision is not justified by the exception in the first indent of Article 4(2) of Regulation (EC) No 1049/2001 concerning the protection of commercial interests.

Fourthly, the contested decision is not justified by the exception in the third indent of Article 4(2) of Regulation (EC) No 1049/2001 concerning the protection of the purpose of inspections and investigations.

(¹) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.5.2001, p. 43).

Action brought on 29 September 2008 — FIFA v OHIM — Ferrero (WORLD CUP 2006)

(Case T-444/08)

(2008/C 313/88)

Language in which the application was lodged: English

Parties

Applicant: Fédération Internationale de Football Association (FIFA) (Zurich, Switzerland) (represented by: D. Alexander QC, A. Barav, Barrister, R. Buchel and C. Rassmann, lawyers)

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

Other party to the proceedings before the Board of Appeal: Ferrero OHG mbH (Stadtallendorf, Germany)

Form of order sought

- Annul, in whole or in part, the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 June 2008 in case R 1466/2005-1; and
- Order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'WORLD CUP 2006' for goods and services in classes 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42 — Community trade mark registration No 2 152 817

Proprietor of the Community trade mark: The applicant

Party requesting the declaration of invalidity of the Community trade mark: The other party to the proceedings before the Board of Appeal

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: (i) Infringement of Article 73 and 74(1) of Council Regulation No 40/94 in so far as the Board of Appeal has based, largely, its decision on Article 7(1)(c) of Council Regulation No 40/94, a provision which was neither invoked by the other party to the proceedings before the Board of Appeal, nor relied upon by the Cancellation Division; (ii) Alternatively, infringement of Article 7(1)(c) of Council Regulation No 40/94 as the Board of Appeal failed to consider the registered Community trade mark subject of the application for a declaration of invalidity as a whole, through the eyes of the average consumer and to apply the relevant law relating to the assessment of descriptiveness of the goods and/or services applied for; and (iii) Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that the registered Community trade mark subject of the application for a declaration of invalidity was devoid of the necessary distinctive character; and (iv) Infringement of Articles 7(3) and 51(2) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that the registered Community trade mark subject of the application for a declaration of invalidity had not acquired a distinctive character for services in class 41.