

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

Other party to the proceedings before the Board of Appeal: Aktieselskabet af 21. november 2001 (Brande, Denmark)

Form of order sought

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 November 2008 in case R 858/2007-2;
- Dismiss the opposition of the other party to the proceedings before the Board of Appeal of 25 January 2005 against the application for registration of the Community trade mark — application No 3 493 137; and
- Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, including the costs incurred in the course of the opposition proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'James Jones', for goods in class 25

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited: Community trade mark registration No 1 107 747 of the word mark 'Jack & Jones' for goods in classes 3, 18 and 25; United Kingdom trade mark registration No 2 063 437 of the word mark 'Jack Jones' for goods in class 25; Benelux trade mark registration No 474 622 of the word mark 'Jack Jones' for goods in class 25; Denmark trade mark registration No VR 1990 06569 of the word mark 'Jack & Jones' for goods in class 25

Decision of the Opposition Division: Upheld the opposition for all the contested goods

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal wrongly assessed that there was a likelihood of confusion between the trade marks concerned; infringement of Article 43(2) of Council Regulation 40/94 as there has been no proof of use submitted before the Board of Appeal for United Kingdom trade mark registration No 2 063 437.

Appeal brought on 19 January 2009 by Luigi Marcuccio against the order of the Civil Service Tribunal made on 4 November 2008 in Case F-87/07 Marcuccio v Commission

(Case T-16/09 P)

(2009/C 55/86)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

- In any event:
 - A.1 A decision setting aside the order under appeal, in its entirety and without exception.
 - A.2 A declaration that the action at first instance was perfectly admissible.
- The principal claim:
 - B.1 The granting in toto and without exception of the appellant's claims at first instance;
 - B.2 an order that the respondent should pay in favour of the appellant all costs, fees and expenses incurred by him both at first instance and on appeal;
- or
 - B.3 refer the case back to the Civil Service Tribunal, sitting in a different formation, so that it may give a fresh decision on the merits of the case.

Pleas in law and main arguments

The decision under appeal in this case is the order made by the Civil Service Tribunal on 4 November 2008 in Case T-87/07 *Marcuccio v Commission*.

The pleas in law and main arguments are similar to those put forward in Case T-9/09 *Marcuccio v Commission*.

The appellant claims, in particular, that the Civil Service Tribunal did not rule on a fundamental aspect of the dispute, that is to say, authorisation to produce a note signed by a doctor. He also alleges that the order lacks any reasoning and is illogical in respect of the alleged inadmissibility of the claim for damages, of the claim that the Tribunal should make a declaration establishing the reality of the actions and conduct complained of and, at least incidentally, declare them unlawful, and of the action at first instance as a whole.