

Pleas in law: Failure to have regard for the conditions governing admissibility in Regulation (EC) No 40/94 ⁽¹⁾ and Regulation (EC) No 2868/95 ⁽²⁾ which must automatically be complied with in proceedings for a declaration of revocation.

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

⁽²⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 21 January 2009 — Park v OHIM — Bae (PINE TREE)

(Case T-28/09)

(2009/C 82/51)

Language in which the application was lodged: German

Parties

Applicant: Mo-Hwa Park (Hillscheid, Germany) (represented by: P. Lee, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Chong-Yun Bae (Berlin, Germany)

Form of order sought

— annul the contested decision of the Fourth Board of Appeal of OHIM of 13 November 2008 in Case R 1882/2007-4; and

— order the intervener to pay the costs of the proceedings, including those incurred during the appeal proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which revocation has been sought: the figurative mark 'PINE TREE' for goods in Class 28 (Community trade mark No 318 857)

Proprietor of the Community trade mark: Chong-Yun Bae

Applicant for the declaration of revocation: the applicant

Decision of the Cancellation Division: declaration of revocation of the Community trade mark concerned

Decision of the Board of Appeal: annulment of the contested decision and rejection of the application for a declaration of revocation of the trade mark concerned

Pleas in law: inadmissibility of the appeal and absence of use of the Community trade mark concerned capable of maintaining in force the right to use it, in accordance with Article 15 and the first sentence of Article 50(1) of Regulation (EC) No 40/94 ⁽¹⁾.

⁽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 21 January 2009 — Engelhorn v OHIM — The Outdoor Group (peerstorm)

(Case T-30/09)

(2009/C 82/52)

Language in which the application was lodged: German

Parties

Applicant: Engelhorn KGaA (Mannheim, Germany) (represented by: W. Göpfert, lawyer)

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 Outdoor Group Limited (Northampton, United Kingdom)

Form of order sought

— annul Decision R-167/2008-5 of the Fifth Board of Appeal of OHIM of 28 October 2008; and

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant.

Community trade mark concerned: the word mark 'peerstorm' for goods and services in Class 25 (Community trade mark application No 4 115 382)

Proprietor of the mark or sign cited in the opposition proceedings: The Outdoor Group Limited

Mark or sign cited in opposition: the word mark 'PETER STORM' for goods in Class 25 (Community trade mark No 833 566) and the British trade mark 'PETER STORM' for goods in Class 18

Decision of the Opposition Division: opposition rejected

Decision of the Board of Appeal: annulment of the decision of the Opposition Division and rejection of the application for a Community trade mark