

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal erred in its finding that there is a likelihood of confusion between the trade marks concerned in respect of identical or highly similar goods, in spite of the existing differences between the visual and phonetic perception of the two signs; Infringement of Article 8(5) of Council Regulation 40/94 as the Board of Appeal wrongly considered that the conditions for the application of the said article were met.

Action brought on 6 April 2009 — Epcos v OHIM — Epcos Sistemas (EPCOS)

(Case T -132/09)

(2009/C 129/33)

Language in which the application was lodged: German

Parties

Applicant: Epcos AG (Munich, Germany) (represented by: L. von Zumbusch, 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: Epcos Sistemas, SL (Constanti, Spain)

Form of order sought

- Annul the decision of the Second Board of Appeal of 19 January 2009, R 1088/2008-2;
- annul Decision No B 979767 of the Opposition Division of 22 May 2008 on the opposition proceedings brought by the opposing party, in so far as the opposition was upheld in respect of the goods 'NTC-Thermistoren', 'PTC-Thermistoren' and 'Sensoren', and reject the opposition in its entirety;
- order the defendant and the opposing party 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: Figurative mark 'EPCOS' for goods in Classes 6 and 9 (application No 4 133 799)

Proprietor of the mark or sign cited in the opposition proceedings: Epcos Sistemas, SL

Mark or sign cited in opposition: Spanish figurative mark 'Epcos SISTEMAS' for goods in Class 9

Decision of the Opposition Division: Upholding in part of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Breach of Article 8(1)(b) and Article 43(2) and (3) of Regulation (EC) No 40/94 and Rule 19(3) of Regulation (EC) No 2868/95,⁽¹⁾ since the opposition trade mark has not been used within the five years prior to publication of the trade mark applied for and there is no likelihood of confusion between the two opposing marks.

⁽¹⁾ 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 6 April 2009 — Nike International v OHIM — Muñoz Molina (R10)

(Case T -137/09)

(2009/C 129/34)

Language in which the application was lodged: Spanish

Parties

Applicant: Nike International Ltd (Oregon, United States) (represented by: M. de Justo Bailey, 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: Aurelio Muñoz Molina (Santa Pola, Spain)

Form of order sought

- Amend the contested decision with regard to the inadmissibility of the appeal, finding that that appeal is admissible, and order the Board of Appeal act in accordance therewith and examine the substance of the appeal;
- In the alternative, find infringement by the Board of Appeal and the Opposition Division of Article 73 of Regulation No 40/94 and the other provisions applicable, ordering its retroactive application to the file to remedy the lack of opportunity of the applicant (Nike International Ltd) to correct the anomalies as assignee of the prior right and/or, at the very least, the correct notification of the Decision to the representative of the preceding proprietor (DL Sports & Marketing Ltda.).

Pleas in law and main arguments

Applicant for a Community trade mark: Aurelio Muñoz Molina.

Community trade mark concerned: Word mark 'R10' (application for registration No 4 813 713) for goods and services in Classes 18, 25 and 35.

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