

Action brought on 12 May 2009 — Galileo International Technology v OHIM — Residencias Universitarias (GALILEO)

(Case T-188/09)

(2009/C 180/98)

Language in which the application was lodged: English

Parties

Applicants: Galileo International Technology LLC (Bridgetown, Barbados) (represented by: M. Blair and K. Gilbert, Solicitors)

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

Other party to the proceedings before the Board of Appeal: Residencias Universitarias, SA (Valencia, Spain)

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 February 2009 in case R 471/2005-4; and
- Order OHIM and the other party to the proceedings before the Board of Appeal to pay their own costs and those incurred by the applicant

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark “GALILEO”, for goods and services in classes 9, 39, 41 and 42

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: Spanish trade mark registrations of the figurative mark “GALILEO GALILEI” for services in classes 39, 41 and 42, respectively

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 (which became Article 8(1)(b) of Council Regulation 207/2009) as the Board of Appeal committed a procedural error under Article 63(2) of Council Regulation 40/94 (which became Article 65(2) of Council Regulation 207/2009) by failing to remit the case back to the Opposition Division; Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal failed to carry out a proper assessment of the likelihood of confusion and incorrectly concluded that the applicant did not argue at all against the reasoning of the Opposition Division on this point; The Board of Appeal erred in its assessment of the similarity and the

likelihood of confusion of the trade marks concerned and failed to provide proper reasons for its findings.

Action brought on 14 May 2009 — HIT Trading and Berkman Forwarding v Commission

(Case T-191/09)

(2009/C 180/99)

Language of the case: Dutch

Parties

Applicants: HIT Trading BV (Barneveld, Netherlands) and Berkman Forwarding BV (Barendrecht, Netherlands) (represented by: A.T.M. Jansen, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- HIT Trading claims that the Court of First Instance should annul the Commission’s decision of 12 February 2009 in Case REC 08/01 and declare that the post-clearance recovery of customs duties and anti-dumping duties is to be waived since the remission of those duties is justified.

Pleas in law and main arguments

The applicants submit that the Commission wrongly decided that the post-clearance recovery of customs duties and anti-dumping duties was justified, and that the Commission was wrong to find that there was no special situation for the purposes of Article 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

The applicants puts forward the following grounds in support of that submission:

- The Commission finds that the Pakistan customs authorities made an active error within the meaning of Article 220(2)(b) of Regulation No 2913/92 as regards preferential origin. The Commission wrongly takes the view that, as regards non-preferential origin, this error is not an error within the meaning of Article 220(2)(b) of Regulation No 2913/92.
- The Commission wrongly finds that the applicants were not careful in regard to the declarations lodged after 10 September 2004.
- In its examination of the question whether post-clearance recovery may be waived or whether a special situation exists, the Commission has failed, without justification, to fulfil its obligations.