

Operative part of the judgment

The Court:

1. Declares that there is no need to adjudicate on the application for annulment;
2. Dismisses the action as to the remainder;
3. Orders Ristic AG, Piratic Meeresfrüchte Import GmbH, Prime Catch Seafood GmbH and Rainbow Export Processing, SA to pay the costs, including those of the interlocutory proceedings.

(¹) OJ C 211, 8.9.2007.

Judgment of the Court of First Instance of 8 July 2009 — Mars v OHIM — Ludwig Schokolade (Shape of a chocolate bar)

(Case T-28/08) (¹)

(Community trade mark — Invalidity proceedings — Community three-dimensional mark — Shape of a chocolate bar — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009) — Lack of distinctive character acquired through use — Article 7(3) of Regulation No 40/94 (now Article 7(3) of Regulation No 207/2009) — Right to be heard — Articles 73 and 74 of Regulation No 40/94 (now Articles 75 and 76 of Regulation No 207/2009))

(2009/C 205/61)

Language of the case: English

Parties

Applicant: Mars, Inc. (McLean, Virginia, United States) (represented by: A. Bryson, Barrister, and G. Mills, Solicitor)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Bullock, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Ludwig Schokolade GmbH & Co. KG (Bergisch Gladbach, Germany) (represented by: M. Knitter and R. Jacobs, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 23 October 2007 (Case R 1325/2006-2), relating to invalidity proceedings between Ludwig Schokolade GmbH & Co. KG and Mars, Inc.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Mars, Inc. to pay the costs.

(¹) OJ C 92, 12.4.2008.

Judgment of the Court of First Instance of 8 July 2009 — Promat v OHIM — Prosima Comercial (PROSIMA PROSIMA COMERCIAL S.A.)

(Case T-71/08) (¹)

(Community trade mark — Opposition proceedings — Application for Community figurative mark PROSIMA PROSIMA COMERCIAL S.A. — Earlier national word mark PROMINA — Relative ground for refusal — Likelihood of confusion — Absence of similarity between the goods — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation No 207/2009))

(2009/C 205/62)

Language of the case: German

Parties

Applicant: Promat GmbH (Ratingen, Germany) (represented initially by S. Beckmann, and subsequently by H. Alt, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by A. Poch, and subsequently by G. Schneider, Agents)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Prosima Comercial, SA (Barcelona, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 27 November 2007 (Case R 574/2007-2) relating to opposition proceedings between Promat GmbH and Prosima Comercial, SA.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Promat GmbH to pay the costs.

(¹) OJ C 92, 12.4.2008.