

Judgment of the Court of First Instance of 16 September 2009 — Zero Industry v OHIM — zero Germany (zerorh+)

(Case T-400/06) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for figurative Community mark zerorh+ — Earlier national figurative and word marks zero — Likelihood of confusion — Similarity of the signs — Similarity between products — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009)

(2009/C 267/95)

Language of the case: English

Parties

Applicant: Zero Industry Srl (Mariano Comense, Italy) (represented by: M. Rapisardi and N. Colombo, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the Court of First Instance: zero Germany GmbH & Co. KG, formerly zero International Holding GmbH & Co. KG (Bremen, Germany) (represented by: W.-D. Kuntze, lawyer)

Re:

Action for annulment of the decision of the First Board of Appeal of OHIM of 5 October 2006 (Case R 958/2005-1) concerning opposition proceedings between zero Germany GmbH & Co. KG and Zero Industry Srl.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Zero Industry Srl to pay the costs.

⁽¹⁾ OJ C 56, 10.3.2007.

Judgment of the Court of First Instance of 16 September 2009 — JanSport Apparel v OHIM (BUILT TO RESIST)

(Case T-80/07) ⁽¹⁾

(Community trade mark — Application for the Community word mark BUILT TO RESIST — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009)

(2009/C 267/96)

Language of the case: English

Parties

Applicant: JanSport Apparel Corp. (Wilmington, Delaware, United States) (represented by: C. Bercial Arias, C. Casalonga and K. Dimidjian-Lecompte, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Laitinen initially, and subsequently by O. Mondéjar Ortuño, acting as Agents)

Re:

Action brought against the decision of 12 January 2007 of the Second Board of Appeal of OHIM (Case R 1090/2006-2) concerning an application for registration of the word mark BUILT TO RESIST as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders JanSport Apparel Corp. to pay the costs.

⁽¹⁾ OJ C 95, 28.4.2007.

Judgment of the Court of First Instance of 23 September 2009 — Fratex Industria e Comércio v OHIM— USA Track & Field (TRACK & FIELD USA)

(Case T-103/07) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for figurative Community mark TRACK & FIELD USA — Earlier national figurative mark TRACK & FIELD — Relative ground for refusal — No likelihood of confusion — Lack of similarity between the signs — Article 8(1)(b) of Regulation (EC) No 40/94 [now Article 8(1)(b) of Regulation (EC) No 207/2009]

(2009/C 267/97)

Language of the case: Spanish

Parties

Applicant: Fratex Indústria e Comércio, Ltda (São Paulo, Brasil) (represented by: B. Braga da Cruz, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: O. Mondéjar Ortuño, Agent)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: USA Track & Field, Inc (Indiana, United States of America)