

— Order the other party to the proceedings before the Board of Appeal to pay the costs incurred by the applicant during the proceedings before OHIM's Opposition Division and Board of Appeal.

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark "Emidio Tucci", for goods and services in classes 1-45

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

Mark or sign cited: Community trade mark registration of the figurative mark "Emilio Pucci" registered for goods in classes 18 and 24; Italian trade mark registration of the word mark "EMILIO PUCCI" registered for goods classes 3, 14, 18, 21, 24, 25 and 33; Italian trade mark registration of the word mark "EMILIO PUCCI" registered for goods classes 9, 12, 18, 20, 26, 27 and 34; Italian trade mark registration of the figurative mark "Emilio Pucci" registered for goods classes 14, 18, 24 and 25

Decision of the Opposition Division: Partially accepted the opposition

Decision of the Board of Appeal: Partially upheld the appeal in cases R 826/2008-2 and R 770/2008-2; dismissed the appeal for the remainder

Pleas in law: Infringement of Articles 8(1)(b) and 8(5) of Council Regulation 207/2009 as the Board of Appeal erred in its conclusion that these legal provisions could not apply with respect to the goods and services covered by the Community trade mark concerned in classes 1, 2, 4-17, 19, 20, 21 (part of), 22, 23 and 26-45.

Action brought on 16 September 2009 — Sociedad Agrícola Requiringua v OHIM — Consejo Regulador de la Denominación de Origen Toro (TORO DE PIEDRA)

(Case T-358/09)

(2009/C 267/141)

Language in which the application was lodged: English

Parties

Applicants: Sociedad Agrícola Requiringua Ltda (Santiago, Chile) (represented by: E. Vorbuchner, lawyer)

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

Other party to the proceedings before the Board of Appeal: Consejo Regulador de la Denominación de Origen Toro (Toro, Spain)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 June 2009 in case R 1117/2008-2;

— Order the defendant to bear all the costs, i.e. the costs of the opposition proceedings, the proceedings before the Board of Appeal and the present proceedings; and

— Order the other party to the proceedings before the Board of Appeal to pay its own costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark "TORO DE PIEDRA", for goods in class 33

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: Community trade mark registration of the figurative mark "D. ORIGEN TORO" for goods in class 33; Spanish trade mark registration of the figurative mark "Denominación de Origen TORO" for goods in class 33

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 207/2009 as the Board of Appeal wrongly held that there was a likelihood of confusion between the trade marks concerned; infringement of Article 75(2) of Council Regulation 207/2009 and the right to be heard as the Board of Appeal failed to hear the latest submission of the applicant; infringement of the obligation to state reasons according to Article 75(1) of Council Regulation 207/2009, as the Board of Appeal failed to reason why it abstained from taking the latest submission of the applicant into account.