

Decision of the Examiner: Refusal of the application

Decision of the Board of Appeal: Partial annulment of the Examiner's Decision

Pleas in law: Wrong application of Article 7(1)(b) of Regulation No 207/2009, ⁽¹⁾ because the mark concerned does have the distinctive character required

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 27 November 2009 — Oetker Nahrungsmittel v OHIM — Bonfait (Buonfatti)

(Case T-471/09)

(2010/C 24/111)

Language in which the application was lodged: German

Parties

Applicant: Dr. August Oetker Nahrungsmittel KG (Bielefeld, Germany) (represented by: F. Graf von Stosch, 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: Bonfait BV

Form of order sought

— Annul the Decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 2 October 2009 in Case R 340/2007-4 concerning opposition No B 871 121;

— order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Oetker Nahrungsmittel

Community trade mark concerned: Word mark 'Buonfatti' for goods in Classes 29 and 30 (Application No 3 939 915)

Proprietor of the mark or sign cited in the opposition proceedings: Bonfait BV

Mark or sign cited in opposition: in particular, the Benelux word mark 'Bonfait' No 393 133 and the figurative Community trade mark 'Bonfait' No 648 816 for goods in Classes 29 and 30

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Annulment of the decision of the Opposition Decision and refusal of the application to register

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009, ⁽¹⁾ since there is no likelihood of confusion between the conflicting trade marks

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1)

Action brought on 30 November 2009 — SP v Commission

(Case T-472/09)

(2010/C 24/112)

Language of the case: Italian

Parties

Applicant: SP SpA (Brescia, Italy) (represented by: G. Belotti, lawyer)

Defendant(s): European Commission

Form of order sought

— Declare the contested decision non-existent and/or null and void.

Pleas in law and main arguments

By decision of 17 September 2002, the Commission concluded a procedure initiated as early as October 2000 entailing a number of unannounced inspections at the premises of a number of Italian steel undertakings and accused them of participating in an illegal cartel for the purpose of Article 65 of the ECSC Treaty, namely between 6 December 1989 and July 2000. That decision was challenged by all the undertakings to which it was addressed, including the applicant.

That action was granted on the basis that the Commission had adopted the contested decision using as a legal basis Article 65 CS, even though the latter was no longer in force at the time when the decision was adopted, the ECSC Treaty having expired five years previously.