

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

Other party to the proceedings before the Board of Appeal of OHIM: Jacson of Scandinavia AB (Vollsjö, Sweden)

Form of order sought

— Annulment of the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (O.H.I.M.) of 18 August 2009 in Case R 1253/2008-2 and, in consequence, maintenance in the register of Community trade mark No 1 077 858 'JACKSON SHOES'

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: JACKSON SHOES

Proprietor of the Community trade mark: applicant

Applicant for the declaration of invalidity: other party to the proceedings before the Board of Appeal

Trade mark right of applicant for the declaration: Swedish name mark 'JACSON OF SCANDINAVIA AB'

Decision of the Cancellation Division: application for declaration of invalidity granted

Decision of the Board of Appeal: appeal dismissed

Pleas in law: Infringement of Articles 8(4) and 53(1)(c) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark, because there is no likelihood of confusion between the trade mark 'JACKSON SHOES' and the trade mark 'JACSON OF SCANDINAVIA AB'.

Although there are graphic and phonetic similarities between the names JACKSON and JACSON, the signs must be compared by taking them in their entirety: 'JACKSON SHOES'/ 'JACSON OF SCANDINAVIA AB'.

It is impossible to recognise (merely on the basis of a Swedish business name) an exclusive right in all the Member States of the European Union to use a name commonly used in many other countries of the Union by thousands of people and by other undertakings, thus constituting a sign of little distinctive character. In consequence, third parties cannot be prevented from again using that sign or another sign resembling it in combination with other elements.

In addition, an average consumer will easily realise that these are different kinds of distinctive signs: one consists of a name mark and the other of a business name, in this case with the addition of the letters AB.

Action brought on 4 January 2010 — PPG and SNF v ECHA

(Case T-1/10)

(2010/C 63/85)

Language of the case: English

Parties

Applicants: Polyelectrolyte Producers Group GEIE (PPG) (Bruxelles, Belgium), SNF SAS (Andrézieux, France) (represented by: K. Van Maldegem, P. Sellar and R. Cana, lawyers)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

- declare the application admissible and well-founded;
- annul the contested act;
- order ECHA to pay the costs of these proceedings;
- take such other or further measures as justice may require.

Pleas in law and main arguments

The applicants seek the annulment of the decision of the European Chemicals Agency ('ECHA') of 7 December 2009 regarding the identification of acrylamide (EC No 201 — 173 — 7) as a substance meeting the criteria set out in Article 57 of Regulation (EC) No 1907/2006⁽¹⁾ (hereinafter 'REACH'), in accordance with Article 59 of REACH.

On the basis of the contested decision, brought to the applicants attention by means of an ECHA press release of 7 December 2009, the substance acrylamide was included in the list of 15 *new chemical substances of the Candidate list of substance of very high concern*. The applicants argue that, as a result, they will be required to provide certain information relating to the level of acrylamide in their products which they sell to customers in order for those customers to comply with notification and information obligations imposed on them by REACH. Further, they may also be required to update the safety data sheets and/or communicate to their customers information on the identification of acrylamide as a substance of very high concern.

The applicants submit that the contested act is unlawful because it is based on an underlying assessment of acrylamide that is scientifically and legally flawed. According to their submissions the defendant committed manifest errors of appraisal in adopting the contested act. In particular, the applicants submit that the contested act infringes the applicable rules established for the identification of substances of very high concern under REACH.

In summary, the applicants claim that the contested act effectively identifies acrylamide as a substance of very high concern on the basis that acrylamide is a chemical substance. However, the applicants claim that acrylamide is used exclusively as an intermediate and is therefore exempt from Title VII concerning Authorisations of REACH, according to Articles 2(8) and 59 of the said Regulation.

Furthermore, the applicants put forward that the contested act was adopted without sufficient evidential basis and therefore, the defendant committed a manifest error of appraisal.

Finally, the applicants claim that the contested act infringes, besides the requirements of REACH, the principles of proportionality and equal treatment.

(¹) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1)

Appeal brought on 15 January 2010 by Luigi Marcuccio against the order of the Civil Service Tribunal of 29 October 2009 in Case F-94/08, Marcuccio v Commission

(Case T-12/10 P)

(2010/C 63/86)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

- In any event, set aside in its entirety and without exception the order under appeal.
- Declare that the action at first instance, in relation to which the order under appeal was made, was perfectly admissible in its entirety and without any exception whatsoever.
- Allow in its entirety and without any exception whatsoever the relief sought by the appellant at first instance.
- Order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation to both the proceedings at first instance and the present appeal proceedings.
- In the alternative, refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.

Pleas in law and main arguments

The present appeal is brought against the order made by the Civil Service Tribunal (CST) on 29 October 2009 in Case F-94/08 *Marcuccio v Commission*. That order dismissed as manifestly inadmissible an action for annulment of the note of 28 March 2008 by which the European Commission informed the appellant of its intention to make a deduction from his invalidity benefit in order to secure payment of the costs incurred in earlier proceedings.

In support of his claims, the appellant alleges distortion and misrepresentation of the facts in the order under appeal, a total failure to state reasons and misapplication and misinterpretation of the principle *tempus regit actum* and of the concept of a decision having an adverse effect.

Action brought on 22 January 2010 — Alisei v Commission

(Case T-16/10)

(2010/C 63/87)

Language of the case: Italian

Parties

Applicant: Alisei (Rome, Italy) (represented by: F. Sciaudone, lawyer, R. Sciaudone, lawyer, A. Neri, lawyer)

Defendant: European Commission