

— in the alternative, stay the proceedings until a final decision is taken on the application for a declaration of invalidity, lodged on 17 March 2010 at the Deutsches Patent- und Markenamt, against the earlier German mark No 302 15 015 'VINOSTASIA'

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Word mark 'VITASIA' for goods in classes 29, 30, 31, 32 and 33 (Application No 4 691 101)

Proprietor of the mark or sign cited in the opposition proceedings: Vinotasia GmbH

Mark or sign cited in opposition: German word mark 'VINOTASIA' No 302 15 015 for goods and services in classes 32, 33 and 35

Decision of the Opposition Division: To uphold the opposition in part

Decision of the Board of Appeal: To dismiss the appeal

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009, ⁽¹⁾ in that no likelihood of confusion between the abovementioned marks exists

⁽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 17 March 2010 — Lux Management v OHIM — Zeis Excelsa (KULTE)

(Case T-130/10)

(2010/C 134/75)

Language in which the application was lodged: English

Parties

Applicant: Lux Management Holding SA (Luxembourg, Luxembourg) (represented by: S. Mas, lawyer)

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

Other party to the proceedings before the Board of Appeal: Zeis Excelsa SPA (Montegranaro, Italy)

Form of order sought

— Declare the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 January 2010 in case R 712/2008-4 without object;

— In the alternative, annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 January 2010 in case R 712/2008-4 because it failed to take into account the evidence presented by the applicant;

— In the alternative, annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 January 2010 in case R 712/2008-4 because it lacks motivation regarding the acquiescence of the registered Community trade mark subject of the application for revocation by the applicant; and

— Order the defendant to bear the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for revocation: The figurative mark 'KULTE' for goods in classes 14, 18 and 25

Proprietor of the Community trade mark: The applicant

Party requesting the revocation of the Community trade mark: The other party to the proceedings before the Board of Appeal

Trade mark right of the party requesting the revocation: Italian trade mark registration of the figurative mark 'CULT', for all goods in class 25; international trade mark registration with effect in France and the Benelux of the figurative mark 'CULT', for goods in classes 14, 18 and 25

Decision of the Cancellation Division: Declared partially invalid the registration of the Community trade mark subject of the application for revocation

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 43 of Council Regulation No 207/2009 as the Board of Appeal failed to recognise that its decision is without object because of the fact that the parties have reached an agreement relating to the coexistence of the trade marks in question and the subsequent request of withdrawal; infringement of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms as the Board of Appeal refused to admit new evidence presented by the applicant; infringement of Article 57(2) of Council Regulation No 207/2009 as the Board of Appeal erred in its assessment of the meaning of evidence transmitted and failed to provide reasons with regard to the proof of acquiescence by the other party to the proceedings before the Board of Appeal of the registered Community trade mark subject of the application for revocation.

Action brought on 23 March 2010 — Pieno žvaigždės v OHIM — Fattoria Scaldasole (Iogurt.)

(Case T-135/10)

(2010/C 134/76)

Language in which the application was lodged: English

Parties

Applicant: AB 'Pieno žvaigždės' (Vilnius, Lithuania) (represented by: I. Lukauskienė and R. Žabalienė, lawyers)

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

Other party to the proceedings before the Board of Appeal: Fattoria Scaldasole Srl (Monguzzo, Italy)

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 January 2010 in case R 1070/2009-2; and

— Order the defendant to pay the costs of the proceedings.

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 'Iogurt.', for goods in class 29

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

Mark or sign cited: Lithuanian trade mark registration of the figurative mark 'jogurtas', for goods in class 29; Community trade mark registration of the figurative mark 'jogurt', for goods in class 29

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Deemed the appeal not to have been filed

Pleas in law: Infringement of Article 60 of Council Regulation No 207/2009 in conjunction with Article 8 of Commission Regulation No 2869/95⁽¹⁾ as the Board of Appeal wrongly concluded that the fee for appeal was not paid within the prescribed time-limit of two months from the date of notification of the appealed decision.

⁽¹⁾ Commission Regulation (EC) No 2869/95 of 13 December 1995 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OJ L 303, p. 33)

Action brought on 24 March 2010 — Spain v Commission

(Case T-138/10)

(2010/C 134/77)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: J. Rodríguez Cárcamo)

Defendant: European Commission

Form of order sought

— Annulment of Commission Decision No 337 of 28 January 2010 reducing the assistance from the European Regional Development Fund (ERDF) for the Comunidad Valenciana operational programme Objective 1 (1994-1999) in Spain pursuant to Decision C(1994) 3043/6, ERDF No 94.11.09.011, and