

— in the alternative, partly annul the decision of the Board of Appeal in respect of the sole goods other than ‘chemicals used in science, photography, agriculture, horticulture and forestry ... manures, chemical substances for preserving foodstuffs...’;

— in any event, order the Office to pay all the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Rosario García-Teresa Gárate

Community trade mark concerned: a figurative mark ‘BASE-SEAL’ for goods in Classes 1, 17 and 19 (Application No 3 951 464)

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

Mark or sign cited in opposition: several national figurative marks (Spanish, Hungarian, French, Polish, Swedish, German and Czech) and an international figurative mark in the form of a diamond, partly in yellow and containing the word ‘Colas’ for goods in Classes 1, 19 and 37

Decision of the Opposition Division: rejection of the opposition

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: infringement of Article 8(1)(b) of Council Regulation (EC) No 207/2009 on the Community trade mark on account of the fact that there is a likelihood of confusion between the conflicting marks

Action brought on 15 April 2010 — Milux v OHIM (FERTILITYINVIVO)

(Case T-175/10)

(2010/C 161/79)

Language of the case: English

Parties

Applicant(s): Milux Holding SA (Luxembourg, Luxembourg) (represented by: J. Bojs, lawyer)

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade

Marks and Designs) of 2 February 2010 in case R 1116/2009-4; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark ‘FERTILITY-INVIVO’ for goods and services in classes 9, 10 and 44

Decision of the examiner: Refused the application for a Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 7(1)(b) and (c) of Council Regulation No 207/2009, as the Board of Appeal erred in its conclusion that the trade mark applied for is not eligible for registration as a Community trade mark because it does not possess sufficient inherent distinctiveness.

Action brought on 15 April 2010 — Seven v OHIM — Seven For All Mankind (SEVEN FOR ALL MANKIND)

(Case T-176/10)

(2010/C 161/80)

Language in which the application was lodged: Italian

Parties

Applicant: Seven SpA (Leinì, Italy) (represented by: L. Trevisan, lawyer)

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

Other party to the proceedings before the Board of Appeal: Seven For All Mankind LLC

Form of order sought

— Annul the decision of the Second Board of Appeal of 28 January 2010.

— Order OHIM to bear its own costs and to pay the costs incurred by Seven SpA in the present proceedings and in the proceedings before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: Seven For All Mankind LLC