

In support of their actions, the applicants raise three pleas in law alleging:

- an infringement of fundamental rights and freedoms and in particular of the right to respect for the home since the applicants were not notified of any national judicial authorisation, thus depriving them of any fundamental guarantee such as access to a judge while the investigations were being carried out and the possibility of pursuing the ordinary avenues of legal redress against such an authorisation;
- an infringement of the principle of proportionality since the validity of the inspection decision was unlimited in duration and had a very broad scope;
- that the inspection mandate accompanying the inspection decision does not provide sufficient guarantees of impartiality and objectivity, in so far as the Commission's agents which previously examined the confidential information which the applicant Lyonnaise des eaux France sent to the Commission in the context of a notification of a concentration are designated in that mandate.

⁽¹⁾ Case COMP/B-1/39.756.

Action brought on 22 June 2010 — mPAY24 GmbH v OHIM — ULTRA d.o.o. Proizvodnja elektronskih naprav (MPAY 24)

(Case T-275/10)

(2010/C 234/79)

Language in which the application was lodged: English

Parties

Applicant: mPAY24 GmbH (Vienna, Austria) (represented by: Dr. H. G. Zeiner and S. Di Natale, lawyers)

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

Other party to the proceedings before the Board of Appeal: ULTRA d.o.o. Proizvodnja elektronskih naprav (Zagorje ob Savi, Slovenia)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 March 2010 in case R 1102/2008-1;
- Order the defendant to bear the costs of the proceedings; and
- Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, should it become an intervening party in this case.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'MPAY24' for goods and services in classes 9, 16, 35, 36 and 38 — Community trade mark application No 2601656

Proprietor of the Community trade mark cited in the invalidity proceedings: The applicant

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

Trade mark right of the party requesting the declaration of invalidity: The party requesting the declaration of invalidity relied its request on absolute grounds for refusal pursuant to Articles 52(1)(a), 7(1)(b), 7(1)(c) and 7(2) of Council Regulation (EC) No 207/2009

Decision of the Cancellation Division: Rejected the request for a declaration of invalidity

Decision of the Board of Appeal: Upheld the appeal and, as a result, annulled the decision of the Cancellation Division and declared the invalidity of the registered Community trade mark

Pleas in law: The applicant advances two pleas in law in support of its application.

On the basis of its first plea, the applicant claims that the contested decision infringes Articles 7(1)(b) and 7(1)(c) of Council Regulation (EC) No 207/2009, as the Board of Appeal erred in concluding that the provisions of these articles are applicable to the contested Community trade mark. In particular, the First Board of Appeal: (i) erred in overturning the previous decision of the Second Board of Appeal of 21 April 2004 which concerns the same matter and which is based on the same grounds; and (ii) erroneously found that the contested Community trade mark is descriptive for the goods and services in question as well as devoid of any distinctive character.

By its second plea, the applicant considers that the contested decision does not comply with the provisions of Council Regulation (EC) No 207/2009, as the Board of Appeal erred in annulling the contested Community trade mark for all the goods and services registered in classes 9, 16, 35, 36 and 38 only on the basis of questionable and not corroborated assumptions.

Action brought on 22 June 2010 — El Coto De Rioja v OHIM — Álvarez Serrano (COTO DE GOMARIZ)

(Case T-276/10)

(2010/C 234/80)

Language in which the application was lodged: Spanish

Parties

Applicant: El Coto De Rioja, S.A. (Oyón, Alava) (Spain) (represented by: J. Grimau Muñoz and J. Villamor Muguera, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: María Álvarez Serrano (Gomariz Leiro, Orense) (Spain)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 28 April 2010 in Case R 1020/2008-4 and, consequently, declare

invalid Community trade mark No 2 631 828, in Class 33, which contains the verbal element 'COTO DE GOMARIZ', and

— order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Figurative trade mark containing the verbal element 'COTO DE GOMARIZ' (Application No 2 631 828) for goods in Class 33 'wines'.

Proprietor of the Community trade mark: María Álvarez Serrano

Applicant for the declaration of invalidity of the Community trade mark: EL COTO DE RIOJA S.A.

Trade mark right or sign of the applicant for the declaration: Community word mark 'COTO DE IMAZ' (No 339 333) for goods in Classes 29, 32 and 33; Community word mark 'EL COTO' (No 339 408) for goods in Classes 29, 32 and 33; and the well-known Spanish marks 'EL COTO' and 'COTO DE IMAZ' for 'wines'.

Decision of the Cancellation Division: Annulment of the contested Community trade mark.

Decision of the Board of Appeal: Annulment of the contested decision and dismissal of the application for a declaration of invalidity.

Pleas in law: Incorrect application of Article 52(1) of Regulation No 207/2009 on the Community trade mark, in conjunction with Articles 8(1)(b) and 8(5) of that regulation.

Action brought on 21 June 2010 — K-Mail Order v OHIM — IVKO (MEN'Z)

(Case T-279/10)

(2010/C 234/81)

Language in which the application was lodged: German

Parties

Applicant: K-Mail Order GmbH & Co. KG (Pforzheim, Germany) (represented by: T. Zeiher, lawyer)