

Secondly, the applicant claims that by not applying the Commission notice on remedies, and consequently failing to market test the pledges, the Commission has breached both essential procedural rules and the applicant's legitimate expectations by depriving it of the opportunity formally to make its views on Oracle's pledges known. Furthermore, by classifying Oracle's pledges as new factual elements rather than as commitments, the Commission has misused its powers.

Thirdly, the Commission has infringed Article 2 of the EC merger Regulation by incorrectly assessing the effects of the pledges on Oracle post merger and in doing so has failed to meet the standard of proof imposed on the Commission under EU law, thereby committing a manifest error of assessment. The Commission accordingly erred in law in taking a clearance decision under Article 2 of the EC Merger Regulation.

Finally, the applicant claims that the Commission has committed a manifest error of assessment in its evaluation of the competitive constraint imposed by other open source competitors on Oracle post merger. The Commission erred in its assessment that even if Oracle were to remove MySQL (Sun Microsystems' main database software product) from the market following the merger, other open source database vendors would replace the competitive constraint exerted by MySQL.

⁽¹⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1).

⁽²⁾ Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ 2008 C 267, p. 1).

Action brought on 6 July 2010 — Seven Towns Ltd v OHIM

(Case T-293/10)

(2010/C 260/22)

Language of the case: English

Parties

Applicant: Seven Towns Ltd (London, United Kingdom) (represented by: E. Schäfer, lawyer)

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

Form of order sought

— Partially annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 April 2010 in case R 1475/2009-1, as far as Community trade mark application No 5650817 was rejected;

— Order the defendant to pay the costs of the proceedings including applicant's costs of legal representation.

Pleas in law and main arguments

Community trade mark concerned: A colour per se mark described as 'six surfaces being geometrically arranged in three pairs of parallel surfaces, with each pair being arranged perpendicularly to the other two pairs characterised by (i) any two adjacent surfaces having different colours and (ii) each surface having a grid structure formed by black borders dividing the surface into nine equal segments'. The indicated colours were red (PMS 200C); green (PMS 347C); blue (PMS 293C); orange (PMS 021C); yellow (PMS 012C); white and black for goods in class 28 — Community trade mark application No 5650817

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

Decision of the Board of Appeal: Annulled the contested decision and rejected Community trade mark application No 5650817

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 violates the principles of due process by infringing Articles 80(1) and 80(2) of Council Regulation (EC) No 207/2009 in conjunction with Rule 53(a) of Commission Regulation (EC) No 2868/95, as the Board of Appeal erroneously examined the substantive issue.

By its second plea, the applicant considers that the contested decision violates its right of fair proceedings by infringing Article 64(1) of Council Regulation (EC) No 207/2009, as the Board of Appeal based its decision on a completely new argument without the Applicant having been invited to submit its observations.

Action brought on 30 June 2010 — CBp Carbon Industries v OHIM

(Case T-294/10)

(2010/C 260/23)

Language of the case: English

Parties

Applicant: CBp Carbon Industries, Inc. (New York, USA) (represented by: J. Fish, Solicitor and S. Malynicz, Barrister)

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

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 21 April 2010 in case R 1361/2009-1;

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

Pleas in law and main arguments

Community trade mark concerned: The word mark 'CARBON GREEN' for goods in class 17 — Community trade mark application No 973531

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

Decision of the Board of Appeal: Dismissed the appeal

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 Article 7(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal erred in its assessment of the distinctiveness of the concerned word mark in relation to the relevant goods.

By its second plea, the applicant considers that the contested decision infringes Article 7(1)(c) of Council Regulation (EC) No 207/2009, as the Board of Appeal (i) erred in relation to the meaning and syntax of the concerned word mark, as well as its aptness or otherwise as an immediate and direct descriptive term for the goods in question; (ii) on the one hand correctly concluded that the relevant public was specialised, yet, on the other failed to establish facts of its own motion that showed the mark was descriptive to such public; and (iii) failed to establish on the evidence that there was, in the relevant specialised sphere, a reasonable likelihood that other traders would wish to use the sign in future.

Action brought on 7 July 2010 — Arrieta D. Gross v OHIM — Toro Araneda (BIODANZA)

(Case T-298/10)

(2010/C 260/24)

Language in which the application was lodged: English

Parties

Applicant: Christina Arrieta D. Gross (Hamburg, Germany) (represented by: J.-P. Ewert, lawyer)

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

Other party to the proceedings before the Board of Appeal: Rolando Mario Toro Araneda (Santiago de Chile, Chile)

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 13 April 2010 in case R 1149/2009-2;

— Order the defendant to bear the costs of the proceedings; and