

Pleas in law and main arguments

The present action is directed against Regulation No 401/2010,⁽¹⁾ in so far as, by adopting that regulation in order to correct the error of including the 'Montepulciano' variety name in Part B of Annex XV to Regulation No 607/2009,⁽²⁾ the Commission moved the name to Part 'A' of Annex XV and at the same time deleted the traditional term 'Vino Nobile di Montepulciano' from the first column of the table in the annex.

In so doing, the defendant categorised as the mere movement of text a substantive change which has a much more significant effect than that permitted by the scope of Article 62(3) of Regulation No 607/2009. The defendant thereby also manifestly misused its powers, using that provision inappropriately for purposes beyond those pursued by it, to the detriment of producers of *Vino Nobile di Montepulciano* and the *Consorzio del Vino Nobile* and, generally, to that of consumers and the market.

The applicants also allege infringement of Article 23 of the TRIPS Agreement. In that connection, it is submitted that the surreptitious deletion of the traditional term 'Vino Nobile' from the protected designation of origin 'Vino Nobile di Montepulciano' is not a sufficient or appropriate measure for pursuing the aims set out in the TRIPS Agreement, since it increases the likelihood of confusion, in particular on the part of Community consumers who are not Italian, who would be easily misled by labelling which makes no distinction as to the use of the term 'Montepulciano'. Thus, there would be an insufficiently clear distinction between the various products designated by that term, when used either as an indication of provenance from the homonymous geographical area without the traditional term, or as an indication of the variety name, preceding rather than following the geographical indication.

⁽¹⁾ Commission Regulation (EU) No 401/2010 of 7 May 2010 amending and correcting Regulation (EC) No 607/2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products (OJ 2010 L 117, p. 13).

⁽²⁾ Commission regulation (EC) No 607/2009 of 14 July 2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products (OJ 2009 L 193, p. 60).

Action brought on 2 August 2010 — Fürstlich Castell'sches Domänenamt/OHMI — Castel Frères (CASTEL)

(Case T-320/10)

(2010/C 260/33)

Language in which the application was lodged: English

Parties

Applicant: Fürstlich Castell'sches Domänenamt, Albrecht Fürst zu Castell-Castell (Castell, Germany) (represented by: R. Kunze, Solicitor, G. Würtenberger and T. Wittmann, lawyers)

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

Other party to the proceedings before the Board of Appeal: Castel Frères SA (Blanquefort, France)

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 4 May 2010 in case R 962/2009-2;
- Order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'CASTEL' for goods in class 33 — Community trade mark registration No 2678167

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The party requesting the declaration of invalidity grounded its request on absolute grounds for refusal pursuant to Article 7 of Council Regulation (EC) No 207/2009

Decision of the Cancellation Division: Rejected the request for invalidity

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7 of Council Regulation No 207/2009, as the Board of Appeal: (i) on the one hand correctly acknowledged that 'Castell' was a recognised indication of origin in relation to wine, yet, on the other erred in considering that the contested trade mark 'CASTEL' was conspicuously different from 'Castell' and hence concluded that the contested trade mark could be registered, (ii) by saying that 'CASTEL' was a word commonly used for 'castle' in the wine industry, failed to draw the conclusion that 'CASTEL' could not be registered; Infringement of Articles 63, 64, 75 and 76 of Council Regulation No 207/2009, as the Board of Appeal did not properly take into account the facts and arguments submitted; Infringement of Article 65 of Council Regulation No 207/2009, as the Board of Appeal acted ultra vires in justifying its decision by a 'peaceful coexistence', although this doctrine is not apparent for consideration for the registration of a trade mark.

**Action brought on 4 August 2010 — SA.PAR. v OHIM —
Salini Costruttori (GRUPPO SALINI)**

(Case T-321/10)

(2010/C 260/34)

Language in which the application was lodged: Italian

Parties

Applicant: SA.PAR. Srl (Rome, Italy) (represented by: A. Masetti Zannini de Concina, M. Bussoletti and G. Petrocchi, 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: Salini Costruttori SpA (Rome, Italy)

Form of order sought

- declare the present action admissible;
- annul the decision of the First Board of Appeal of OHIM of 21 April 2010 on the grounds of breach of Articles 52(1)(b) and 53(1)(a) of Regulation (EC) No 207/2009 and of a deficient statement of reasons;

- order OHIM to pay the costs of the present proceedings and of those before the Board of Appeal.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'GRUPPO SALINI' (registration application No 3 832 161) for services in Classes 36, 37 and 42.

Proprietor of the Community trade mark: The applicant.

Party requesting the declaration of invalidity of the Community trade mark: SALINI COSTRUTTORI SpA.

Trade mark right of the party requesting the declaration of invalidity: Well-known trade mark in Italy, de facto trade mark, domain name and company name of 'SALINI' for services in Classes 36, 37 and 42.

Decision of the Cancellation Division: Rejection of the application for a declaration of invalidity.

Decision of the Board of Appeal: Annulment of the decision of the Cancellation Division and declaration of nullity of the Community trade mark.

Pleas in law: Breach of Article 53(1)(a), in conjunction with Article 8(1)(b) and 8(2)(c), of Regulation No 207/2009 on the Community trade mark, breach of Article 52(1)(b) of that regulation, and deficient statement of reasons.

Action brought on 30 July 2010 — Clasado v Commission

(Case T-322/10)

(2010/C 260/35)

Language of the case: English

Parties

Applicant: Clasado Ltd. (Milton Keynes, United Kingdom) (represented by: G.C. Facenna, Barrister, M.E. Guinness and M.C. Hann, Solicitors)

Defendant: European Commission