

*Community trade mark concerned:* The figurative mark representing the head of a wolf, for goods in class 7 — Community trade mark application No 4971511

*Proprietor of the mark or sign cited in the opposition proceedings:* The other party to the proceedings before the Board of Appeal

*Mark or sign cited in opposition:* French trade mark registration No 99786007 of the figurative mark 'WOLF Jardin' for goods in classes 1, 5, 7, 8, 12 and 31; French trade mark registration No 1480873 of the figurative mark 'Outils WOLF' for goods in classes 7 and 8; International trade mark registration No 154431 of the figurative mark 'Outils WOLF' for goods in classes 7 and 8; International trade mark registration No 352868 of the figurative mark 'Outils WOLF' for goods in classes 7, 8, 12 and 21

*Decision of the Opposition Division:* Rejected the opposition

*Decision of the Board of Appeal:* Annulled the decision of the Opposition Division

*Pleas in law:* The applicant contends that the contested decision infringes Articles 42(2) and 42(3) of Council Regulation (EC) No 207/2009, as the Board of Appeal failed to identify within the class of products for which the earlier marks were registered a coherent sub-category capable of being viewed independently of the wider class, and therefore failed to conclude that there had only been proof that the mark has been put to genuine use in relation to part of the goods for which the marks were protected.

In addition, the applicant contends that the contested decision infringes Article 8(5) of Council Regulation (EC) No 207/2009, as the Board of Appeal misidentified the relevant consumer, wrongly concluded that there would be a relevant link and failed to apply the criterion of an effect on the economic behaviour of the relevant consumer and the criterion that in order to be considered unfair, the mark must transfer some image or confer some marketing boost to the junior users' goods, which was not the case. Further the Board of Appeal failed to realise that the proprietor of the earlier mark had not even correctly alleged the relevant harm under Article 8(5), still less proved that it was likely, and had therefore failed to discharge the burden upon it.

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**Action brought on 16 December 2010 — Fabryka Łożysk Tocznych-Kraśnik v OHIM — Impexmetal (FŁT-1)**

(Case T-571/10)

(2011/C 63/54)

*Language in which the application was lodged:* Polish

#### Parties

*Applicant:* Fabryka Łożysk Tocznych-Kraśnik S.A. (Kraśnik, Poland) (represented by: J. Sieklucki, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Impexmetal S.A. (Warsaw, Poland)

#### Form of order sought

- annul in its entirety the decision of the First Board of Appeal of OHIM of 6 October 2010 in Case R 1387/2009-1;
- order OHIM and IMPEXMETAL S.A. to pay the costs of the proceedings, including the costs incurred by the applicant in its action before the Board of Appeal and the Opposition Division of OHIM.

#### Pleas in law and main arguments

*Applicant for a Community trade mark:* the applicant

*Community trade mark concerned:* figurative trade mark 'FŁT-1' for goods in Class 7 — application no 5026372

*Proprietor of the mark or sign cited in the opposition proceedings:* IMPEXMETAL S.A.

*Mark or sign cited in opposition:* Community figurative trade marks 'FŁT' and national verbal and figurative trade marks 'FŁT' for goods in Class 7

*Decision of the Opposition Division:* opposition upheld in part and trade-mark application rejected in respect of several goods in Class 7

*Decision of the Board of Appeal:* appeal brought against the decision of the Opposition Division dismissed

*Pleas in law:* breach of Article 8(1)(b) of Regulation (EC) No 207/2009 <sup>(1)</sup> by reason of a misappraisal of the similarity of the opposing marks; failure to have regard for the fact that the trade mark applied for constitutes part of the name of the applicant company, which has been used long before the date of the application, and is a historically well-founded designation distinguishing the applicant; and failure to take account of the long-lasting and peaceful co-existence of the trade mark applied for and the trade marks cited in opposition.

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<sup>(1)</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) (OJ 2009 L 78, p. 1).