

Action brought on 22 December 2010 — Wohlfahrt v OHIM — Ferrero (Kindertraum)

(Case T-580/10)

(2011/C 63/55)

Language in which the application was lodged: German

Parties

Applicant: Harald Wohlfahrt (Rothenburg o.d. Tauber, Germany) (represented by: N. Scholtz-Recht, 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: Ferrero SpA (Alba, Italy)

Form of order sought

— Annul the decision of the Opposition Division of 27 May 2009 (Opposition No B 668 600) and the decision of the Board of Appeal of 20 October 2010 in Case R 815/2009-4;

— Order that Community trade mark 'Kindertraum', application No 002773059, be registered also for all goods applied for in Classes 16 and 28;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark 'Kindertraum' for goods in Classes 15, 16, 20, 21 and 28.

Proprietor of the mark or sign cited in the opposition proceedings: Ferrero SpA.

Mark or sign cited in opposition: A total of 32 older marks which, in part figuratively, in part as a component of a multi-word mark and in part as a single word, contain the word 'kinder', in particular the Italian word mark 'kinder' for goods and services in Classes 9, 16, 28, 30 and 42.

Decision of the Opposition Division: Upheld the opposition and refused registration.

Decision of the Board of Appeal: Dismissed the appeal.

Pleas in law: Infringement of Article 42(2) of Regulation (EC) No 207/2009 ⁽¹⁾ on the ground of missing evidence of use after expiry of the period of protected use during the opposition proceedings. Formal lack of grounds for the contested decision, since the Board of Appeal, in its decision, failed to examine the abusive trade mark application alleged in the

grounds for the appeal and extensively supported by evidence. Further, an abusive trade mark application, since the sole aim of the proprietors of the opposing mark is to monopolise the term 'kinder' in the widest possible manner. Finally, infringement of Article 8(1)(b) of Regulation (EC) No 207/2009, since there is no likelihood of confusion between the marks at issue.

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

Action brought on 23 December 2010 — X Technology Swiss v OHIM — Brawn (X-Undergear)

(Case T-581/10)

(2011/C 63/56)

Language in which the application was lodged: German

Parties

Applicant: X Technology Swiss GmbH (Wollerau, Switzerland) (represented by: A. Herbertz and R. Jung, 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: Brawn LLC (Weekhawken, United States of America)

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 6 October 2010 in Case R 1580/2009-1;

— Order the defendant to bear its own costs and pay those incurred by the applicant.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark 'X-Undergear' for goods and services in Classes 23 and 25.

Proprietor of the mark or sign cited in the opposition proceedings: Brawn LLC.

Mark or sign cited in opposition: National and Community word mark 'UNDERGEAR' for goods in Class 25.

Decision of the Opposition Division: Upheld the opposition.

Decision of the Board of Appeal: Dismissed the appeal.