

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 207/2009⁽¹⁾, since the term 'ESPETEC' is not devoid of distinctive character when considered independently of the goods applied for and infringement of Article 7(3) of Regulation (EC) No 207/2009 given the distortion and incorrect assessment of the evidence of use on the market of the mark 'ESPETEC'.

⁽¹⁾ Council Regulation (EC) No 2007/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1)

Action brought on 14 February 2011 — Formica v OHIM — Silicalia (CompacTop)

(Case T-82/11)

(2011/C 113/32)

Language in which the application was lodged: Spanish

Parties

Applicant: Formica, SA (Galdakao, Spain) (represented by: A. Gómez López, 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: Silicalia, SL (Valencia, Spain)

Form of order sought

The applicant requests the Court to:

- declare as not being in accordance with Regulation EC No 207/2009 on the Community trade mark the decision of 9 December 2010 of the First Board of Appeal of OHIM, in Case R 1083/2010-1;
- allow registration of the complex Community trade mark No 6 524 243 CompacTop, in Class 20; and
- order the defendant and, if appropriate, the intervener, to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Formica

Community trade mark concerned: Figurative mark 'CompacTop' for goods in Class 20.

Proprietor of the mark or sign cited in the opposition proceedings: Silicalia, SL

Mark or sign cited in opposition: Community and national figurative marks containing the word elements 'COMPACquartz',

'COMPACMARMOL&QUARTZ' and 'COMPAC MARMOL&QUARTZ' for goods and services in Classes 19, 27, 35, 37 and 39.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009⁽¹⁾ since there is no similarity or 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 11 February 2011 — Antrax ItM v OHIM — Heating Company (Radiators for heating)

(Case T-83/11)

(2011/C 113/33)

Language in which the application was lodged: Italian

Parties

Applicant: Antrax It Srl (Resana, Italy) (represented by: L. Gazzola, lawyer)

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

Other party to the proceedings before the Board of Appeal: Heating Company BVBA (The) (Dilsen, Belgium)

Form of order sought

The applicant claims that the Court should:

- annul the decision of the Third Board of Appeal of OHIM of 2 November 2010, in so far as it declared Community design No 000593959-0001 invalid;
- annul the decision of the Third Board of Appeal of OHIM of 2 November 2010 in so far as it ordered Antrax It Srl to pay the costs incurred by The Heating Company BVBA in the proceedings before OHIM;
- order OHIM and The Heating Company BVBA to pay Antrax It SRL the costs, dues and legal fees relating to the present proceedings, together with any additional sums required by law;
- order The Heating Company BVBA to pay Antrax It Srl the costs, dues and legal fees incurred by the latter in the proceedings before OHIM, together with any additional sums required by law.