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

Other party to the proceedings before the Board of Appeal: Vincci Hoteles S.A. (Alcobendas, Spain)

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 25 November 2010 in case R 641/2010-1;

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

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'NANU', for goods and services in classes 3, 4, 6, 16, 18, 20, 21, 24, 26 and 35 — Community trade mark application No 6218879

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: Community trade mark registration No 5238704 of the word mark 'NAMMU', for goods and services in classes 3, 32 and 44

Decision of the Opposition Division: Partly upheld the opposition and consequently partly rejected the Community trade mark application for goods and services in classes 3, 4, 16, 21 and 35 and rejected the opposition for goods and services in classes 6, 9, 16, 18, 20, 21, 24, 26 and 35

Decision of the Board of Appeal: Annulled in part the decision of the Opposition Division and rejected the opposition for goods in classes 4, 16 and 21 and dismissed the appeal for the remainder and confirms the rejection of the Community trade mark application for goods and services in classes 3, 21 and 35

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assessed that there was likelihood of confusion on the part of the relevant public.

Action brought on 21 February 2011 — Chimei InnoLux v Commission

(Case T-91/11)

(2011/C 113/36)

Language of the case: English

Parties

Applicant: Chimei InnoLux Corp. (Zhunan, Taiwan), (represented by: J.-F. Bellis, lawyer and R. Burton, Solicitor)

Defendant: European Commission

Form of order sought

— annul Commission Decision C(2010) 8761 final of 8 December 2010 in Case COMP/39.309 — LCD — Liquid Crystal Displays insofar as it finds that the infringement extended to LCD panels for TV applications;

— reduce the amount of the fine imposed upon the applicant in the decision; and

— order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging the Commission applied a legally flawed concept, the concept of so-called 'direct EEA sales through transformed products', in determining the relevant value of sales for the calculation of the fine.

   In calculating the relevant value of sales of the applicant for the purpose of the determination of the fine, the Commission counted the value of LCD panels incorporated in finished IT or TV products sold by the applicant in the EEA. The applicant submits that this concept of 'direct EEA sales through transformed products' is legally unsound and cannot be used for the determination of the relevant value of sales. The applicant submits that the concept relies on sales of products to which the infringement does not directly or indirectly relate and artificially shifts the location of relevant intra-group sales of LCD panels from outside the EEA to within the EEA and *vice versa* depending upon the location of sale of the finished products into which such LCD panels are incorporated. As such, the applicant submits that the concept is inconsistent with the past case-law of the EU courts dealing, among others, with the treatment of intra-group sales for the calculation of the fine. Finally, the applicant submits that the concept as applied by the Commission in the decision leads to discrimination between the addressees of the decision illegally based on the mere form of their respective corporate structures.

2. Second plea in law, alleging that the Commission violated Article 101 TFEU and Article 53 of the EEA Agreement in finding that the infringement extended to LCD panels for TV applications.

The applicant submits that, due to the specific characteristics of LCD panels for TV applications, the superficial and episodic nature of the discussions relating to such panels, and the fact that other, more detailed bilateral discussions concerning LCD panels for TV applications involving third parties were disregarded by the Commission in the decision, conduct regarding LCD panels for TV applications should have been analysed and assessed distinctly from the conduct relating to LCD panels for IT applications. In particular, in light of these factors, the applicant submits that the Commission's finding that the infringement extended to LCD panels for TV applications is vitiated by violations of the principle of equal treatment and fundamental procedural requirements and must be annulled or, at the very least, that the Commission ought to have assessed the gravity and duration of any infringement arising from the conduct relating to LCD panels for TV applications separately from the infringement relating to LCD panels for IT applications for the purposes of calculating the fine.

3. Third plea in law, alleging that the relevant value of sales taken by the Commission as the basis for the calculation of the applicant's fine erroneously include sales other than sales of liquid crystal display panels for IT and TV applications.

Sales of LCD panels for medical applications, which are used in the manufacture of medical equipment, were mistakenly included in sales data provided to the Commission during the administrative procedure. Given that medical panels do not qualify as IT or TV panels as defined by the Commission in the decision, the applicant submits that its sales of medical panels must be excluded from the relevant value of sales used to calculate the fine. Sales of so-called LCD open cells were also mistakenly included in sales data provided to the Commission during the administrative procedure. Given that LCD open cells are not finished products and the decision finds no infringement in relation to semi-finished products, the applicant submits that its sales of LCD open cells must be excluded from the relevant value of sales used to calculate the fine.

Action brought on 15 February 2011 — Stichting Corporate Europe Observatory v Commission

(Case T-93/11)

(2011/C 113/37)

Language of the case: English

Parties

Applicant: Stichting Corporate Europe Observatory (Amsterdam, Netherlands) (represented by: S. Crosby, Solicitor, and S. Santoro, lawyer)

Defendant: European Commission

Form of order sought

— find that the Commission Decision of 6 December 2010 in procedure GESTDEM 2009/2508 infringes Regulation No 1049/2001 ([1]) and annul it accordingly; and

— order the Commission to pay the applicant's costs pursuant to Article 87 of the Rules of Procedure of the General Court.

Pleas in law and main arguments

By means of his application the applicant seeks, pursuant to Article 263 TFEU, the annulment of the Commission Decision of 6 December 2010 in procedure GESTDEM 2009/2508 refusing to allow full access to several documents relating to the trade negotiations between the EU and India, pursuant to Regulation No 1049/2001.

In support of the action, the applicant relies on one plea in law, alleging misapplication of Article 4(1)(a) third indent of Regulation No 1049/2001, as the international relations exception is inapplicable in this case because all the documents requested are in the public domain.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43

Action brought on 16 February 2011 — Shang v OHIM (Justing)

(Case T-103/11)

(2011/C 113/38)

Language in which the application was lodged: Italian

Parties

Applicant: Tiantian Shang (Rome, Italy) (represented by A. Salerni, lawyer)

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

Form of order sought

— Annul the contested provision.

— Alter the decision taken by OHIM and recognise the right of seniority enjoyed by national mark RM 2006C002075 in relation to Community trade mark 008391202, including the name and symbol, with all the effects thus entailed as provided for in Regulation No 40/94 on the Community trade mark, as replaced by Regulation No 207/2009.