

Other party to the proceedings before the Board of Appeal: Vitra Collections AG

Form of order sought

— Annul the contested decision and declare Community trade mark No 2.298.420 invalid

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: A three-dimensional figurative mark based on the 'Alu chair' (Community trade mark No 2 298 420), for goods in Class 20

Proprietor of the Community trade mark: Vitra Collections AG

Applicant for the declaration of invalidity of the Community trade mark: High Tech Srl

Grounds for the application for a declaration of invalidity: Infringement of Article 7(1)(e)(iii) of Regulation 207/2009. The applicant also claimed that the mark should be declared invalid on the ground that its registration is intended to exclude the applicant from the market in design objects that have entered the public domain and therefore the registration was in bad faith.

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

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Misinterpretation and misapplication of Articles 7(1)(e)(iii) and 52(1)(b) of Regulation 207/2009.

Action brought on 17 March 2011 — Cofra v OHIM — O2 (can do)

(Case T-162/11)

(2011/C 139/51)

Language in which the application was lodged: German

Parties

Applicant: Cofra Holding AG (Zug, Switzerland) (represented by: K.-U. Jonas and J. Bogatz, lawyers)

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

Other party to the proceedings before the Board of Appeal: O2 Holdings Ltd (Slough, United Kingdom)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 January 2011 in Case R 242/2009-4;

— Order the defendant and, if appropriate, the other party to the proceedings to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: O2 Holdings Ltd.

Community trade mark concerned: Word mark 'can do' for goods and services in Classes 9, 16, 25, 35, 36, 38 and 43.

Proprietor of the mark or sign cited in the opposition proceedings: The applicant.

Mark or sign cited in opposition: Word mark 'CANDA' for goods in Class 25.

Decision of the Opposition Division: Rejection of the opposition.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 15 and Article 42(2) of Regulation (EC) No 207/2009 ⁽¹⁾ and of Rule 22 of Regulation (EC) No 2868/95, ⁽²⁾ in that the Board of Appeal applied criteria which are too narrow in assessing the proof of use sufficient to maintain the right and failed to have sufficient regard to the particular distribution situation in the applicant's undertaking. Further, infringement of Article 76(2) of Regulation (EC) No 207/2009, in that the Board of Appeal wrongly failed to have regard to various documents submitted as proof of use sufficient to maintain the right in the opposing mark. Finally, infringement of Article 75(2) of Regulation (EC) No 207/2009, in that the Board of Appeal did not inform the applicant that it regarded the proof of use submitted as insufficient and did not provide the applicant with an opportunity of submitting further proof in oral proceedings.

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

⁽²⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 2009 L 303, p. 1).

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(Case T-163/11)

(2011/C 139/52)

Language in which the application was lodged: German

Parties

Applicant: Cofra Holding AG (Zug, Switzerland) (represented by: K.-U. Jonas and J. Bogatz, lawyers)