

Proprietor of the mark or sign cited in the opposition proceedings: Promotora Imperial, SA

Mark or sign cited in opposition: Community word mark 'i-hotel' for goods and services in Classes 16, 41 and 43.

Decision of the Opposition Division: Opposition upheld in part.

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009 as there is no likelihood of confusion between the trade marks at issue. The applicant claims that the Board of Appeal was incorrect in holding there to be similarity both between the goods and services concerned and between the trade marks at issue.

Action brought on 31 May 2011 — Ewald v OHIM — Kin Cosmetics (Keen)

(Case T-280/11)

(2011/C 238/36)

Language in which the application was lodged: German

Parties

Applicant: Rita Ewald (Frauenwald, Germany) (represented by: S. Reinhardt, lawyer)

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

Other party to the proceedings before the Board of Appeal: Kin Cosmetics, SA (Sant Feliu de Guixols, Spain)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the First Board of Appeal of OHIM of 3 March 2011 in Case R 1383/2010-1;
- Reject the opposition filed at OHIM on 24 July 2008 under No B 1359944 by KIN COSMETICS, SA against Community trade mark application No EM 006 498 621 'Keen';
- In the alternative, in the event that the Court cannot itself reach a decision under the second head of claim, refer the case back to OHIM for a fresh decision;
- Order the defendant and KIN COSMETICS, SA, in so far as it decides to participate in the proceedings, to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'Keen' for goods and services in Classes 3 and 44 — application No 6 498 621

Proprietor of the mark or sign cited in the opposition proceedings: Kin Cosmetics, SA

Mark or sign cited in opposition: the Community and national word and figurative marks 'KIN', 'KinBooks', 'KINWORKS' and 'KINSTYLUM' for goods and services in Classes 3, 5, 35 and 44

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009 as there is no likelihood of confusion between the marks at issue.

Appeal brought on 3 June 2011 by Diego Canga Fano against the judgment of the Civil Service Tribunal of 24 March 2011 in Case F-104/09, Canga Fano v Council

(Case T-281/11 P)

(2011/C 238/37)

Language of the case: French

Parties

Appellant: Diego Canga Fano (Brussels, Belgium) (represented by S. Rodrigues and C. Bernard-Glanz, lawyers)

Other party to the proceedings: Council of the European Union

Form of order sought by the appellant

The applicant claims that the Tribunal should:

- declare the appeal admissible;
- set aside the judgment delivered on 24 March 2011 by the Civil Service Tribunal of the European Union in Case F-104/09;
- grant the applications for annulment and damages which the applicant brought before the Civil Service Tribunal, subject to the proviso that the applicant would be satisfied with the annulment of the decision adopted and would accept one euro as symbolic compensation for the damage caused to him;
- order the Council to pay the costs of both instances.

Pleas in law and main arguments

In support of the appeal, the appellant relies on a single plea in law, divided into three parts and alleging an error of law.

- In the first part, the applicant claims that the Civil Service Tribunal interpreted the applicable provisions in a manner contrary to that laid down by the Court of Justice and the General Court in their case-law concerning the appointing authority's discretion (paragraphs 35 and 36 of the judgment under appeal).
- In the second part, the applicant claims that the Civil Service Tribunal drew conclusions unjustified in law in its review of the manifest error of assessment (paragraphs 48, 51, 52, 58, 78, and 79 of the judgment under appeal) and contradicted its own criteria, with which it claims to replace the case-law of the Court of Justice and the General Court.