

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

Other party to the proceedings before the Board of Appeal: Asteris Industrial and Commercial Company SA (Athens, Greece)

Form of order sought

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 May 2011 in case R 1358/2008-2;
- Order the defendant and the other party to the proceedings to bear their own costs and pay those of the applicant.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark 'Al bustan', for goods in classes 29, 30, 31 and 32 — Community trade mark registration No 3540846

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity of the Community trade mark: The other party to the proceedings before the Board of Appeal

Grounds for the application for a declaration of invalidity: The party requesting the declaration of invalidity grounded its request pursuant to Articles 51(1)(b) and 52(1)(a) of Council Regulation (EC) No 207/2009, and based its request on the earlier Greek trade mark registration No 137497 of the figurative mark 'AL BUSTAN', for goods in class 29

Decision of the Cancellation Division: Declared the Community trade mark invalid in respect of part of the contested goods

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 53(1), 57(2) and 57(3) of Council Regulation No 207/2009, as the Board of Appeal wrongly concluded that the proprietor of the earlier national mark had furnished proof that during the five years preceding the date of the application for declaration of invalidity, the earlier mark had been put to genuine use in the Member State in which it was registered in connection with the goods for which it was registered or that there were proper reasons for non-use. Further the Board of Appeal made impermissible inferences from material of low (or no) evidentiary value.

Action brought on 29 August 2011 — Colgate-Palmolive v OHIM — dm drogerie markt (360° SONIC ENERGY)

(Case T-467/11)

(2011/C 319/49)

Language in which the application was lodged: English

Parties

Applicant: Colgate-Palmolive Company (New York, United States) (represented by: M. Zintler and G. Schindler, lawyers)

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

Other party to the proceedings before the Board of Appeal: dm-drogerie markt GmbH & Co. KG (Karlsruhe, Germany)

Form of order sought

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 May 2011 in case R 1094/2010-2; and
- Reject the opposition

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark '360° SONIC ENERGY', for 'toothbrushes' in class 21 — Community trade mark application No 6236533

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: International trade mark registration No 842882 of the word mark 'SONIC POWER', for goods in classes 3 and 21

Decision of the Opposition Division: Upheld the opposition and rejected the Community trade mark application in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal incorrectly found a likelihood of confusion between the marks at issue.

Action brought on 1 September 2011 — Total and Elf Aquitaine v Commission

(Case T-470/11)

(2011/C 319/50)

Language of the case: French

Parties

Applicants: Total SA (Courbevoie, France) and Elf Aquitaine SA (Courbevoie) (represented by: A. Noël-Baron and É. Morgan de Rivery, lawyers)

Defendant: European Commission