

Decision of the Opposition Division: Partially upheld the opposition

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 wrongly assessed that the marks in dispute are confusingly similar.

Action brought on 27 September 2011 — Delphi Technologies v OHIM (INNOVATION FOR THE REAL WORLD)

(Case T-515/11)

(2011/C 355/40)

Language of the case: English

Parties

Applicant: Delphi Technologies, Inc. (Wilmington, United States of America) (represented by: C. Albrecht and J. Heumann, lawyers)

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

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 23 June 2011 in case R 1967/2010-2;

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

Pleas in law and main arguments

Community trade mark concerned: The word mark 'INNOVATION FOR THE REAL WORLD', for goods in classes 7, 9, 10 and 12 — Community trade mark application No 7072705

Decision of the Examiner: Refused the application in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 207/2009, as the Board of Appeal: (i) misunderstood the burden of arguments and proof laid down in Article 7(1)(b); (ii) erred in applying the relevant case law of the ECJ for the assessment of distinctiveness of slogans and the possible meaning of the mark applied for; and, (iii) neglected the substantial use and notoriety of the mark which is important for the perception of the slogan by the relevant consumers. Infringement of Article 7(1)(b) of Council Regulation No 207/2009 and the general principles of the administrative proceedings, as the Board of Appeal did not take into account that identical and similar slogans with the word 'INNOVATION' have already been registered in the EU and in particular by the OHIM.

Action brought on 29 September 2011 — United States Polo Association v OHIM — Polo/Lauren (Representation of a device of two polo players)

(Case T-517/11)

(2011/C 355/41)

Language in which the application was lodged: English

Parties

Applicant: United States Polo Association (Kentucky, USA) (represented by: P. Goldenbaum, I. Rohr and T. Melchert, lawyers)

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

Other party to the proceedings before the Board of Appeal: The Polo/Lauren Company, LP (New York, USA)

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 17 June 2011 in case R 1107/2010-2;

— Order the defendant to pay its own costs and those of the applicant; and

— Order the other party before the Board of Appeal to pay its own costs, in case it intervenes in the proceedings

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Community trade mark application of the figurative mark representing a device of two polo players, for goods in class 3 — Community trade mark registration No 5997473

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: French trade mark registration No 1441630 of the figurative mark representing a device of a polo player, for goods and services in classes 3, 9, 14, 16, 18, 24, 25 and 35; Spanish trade mark registration No 878316 of the figurative mark representing a device of a polo player, for goods in class 3; United Kingdom trade mark registration No 2172123 of the figurative mark representing a device of a polo player, for goods in class 3; German trade mark registration No 1070650 of the figurative mark representing a device of a polo player, for goods in class 3; Community trade mark registration No 4236527 of the three-dimensional trade mark representing a bottle device with a polo player, for goods in class 3