

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'FOREVER', for goods in classes 3, 5, 30, 31 and 32 — Community trade mark application No 5617089

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: Portuguese trade mark registration No 297697 of the figurative mark '4 EVER', for goods in class 32

Decision of the Opposition Division: 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 failed: (i) to correctly assess the proof of use provided by the other party to the proceedings before the Board of Appeal; (ii) to correctly identify the aural differences between the opposed trade marks; (iii) to correctly identify the conceptual differences between the trade marks in conflict; and (iv) to correctly identify the visual differences between the opposed trade marks.

Action brought on 29 September 2011 — Evonik Industries v OHIM — Impulso Industrial Alternativo (Impulso creador)

(Case T-529/11)

(2011/C 362/28)

Language in which the application was lodged: English

Parties

Applicant: Evonik Industries AG (Essen, Germany) (represented by: J. Albrecht, lawyer)

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

Other party to the proceedings before the Board of Appeal: Impulso Industrial Alternativo, SA (Madrid, Spain)

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 June 2011 in case R 1101/2010-2; and

— 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 'Impulso creador', for various goods and services among which services in classes 35, 36, 37 and 42 — Community trade mark application No 6146187

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: Spanish trade mark registration No 2633891 of the figurative mark 'IMPULSO', for services in classes 35 and 42; Community trade mark registration No 4438206 of the figurative mark 'IMPULSO', for services in classes 35 and 42

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 did not correctly consider the different overall impression of the conflicting trademarks.

Action brought on 7 October 2011 — Chivas v OHIM — Glencairn Scotch Whisky (CHIVALRY)

(Case T-530/11)

(2011/C 362/29)

Language in which the application was lodged: English

Parties

Applicant: Chivas Holdings (IP) Ltd (Renfrewshire, United Kingdom) (represented by: A. Carboni, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Glencairn Scotch Whisky Co. Ltd (Glasgow, United Kingdom)

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 14 July 2011 in case R 2334/2010-1, and remit the application to OHIM to allow it to proceed; and

— Order the defendant and any intervening parties in this appeal to bear their own costs and those of the applicant, incurred for these proceedings and those of the appeal procedure before the Board of Appeal.