

Action brought on 23 February 2012 — Gas v OHIM — Grotto (GAS)

(Case T-92/12)

(2012/C 126/41)

*Language in which the application was lodged: French***Parties***Applicant:* André Pierre Gas (Marseille, France) (represented by: L. Levy, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* Grotto Spa (Chiuppano, Italy)**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 17 November 2011 in Case R 600/2009-1 in its entirety and refer the case back to OHIM to be reconsidered in the light of the decision to be made;
- Order the proprietor of the disputed Community trade mark to pay all the future costs of these proceedings and to reimburse the applicant for the costs of appeal incurred by him to date.

Pleas in law and main arguments*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* Word mark 'GAS' for goods in Classes 9, 18 and 25 — registered Community trade mark No 882548.*Proprietor of the Community trade mark:* The other party to the proceedings before the Board of Appeal.*Applicant for the declaration of invalidity of the Community trade mark:* The applicant.*Grounds for the application for a declaration of invalidity:* The grounds put forward for the application for the declaration of invalidity are based, on the one hand, on the application of Article 53(1)(a) and (c), Article 8(1)(b), Article 53(2) and Article 8(1) of Regulation No 207/2009 and, on the other, on French registrations No 1594704 and No 1627459 of figurative [marks] '-GAS- BIJOUX' and 'BIJOUX -GAS-' for goods in Classes 14 and 25.*Decision of the Cancellation Division:* Annulment of the Community trade mark.*Decision of the Board of Appeal:* Annulment of the decision of the Cancellation Division and dismissal of the application for annulment.*Pleas in law:*

Infringement of Article 56(3) of Regulation No 40/94 (now Article 57(3) [of Regulation No 207/2009]) and of Rule 22(3) and (4) of Regulation No 2868/95; infringement of Article 15(1) and (2) of Regulation No 40/94 and of Article L714(5)(b) of the French Intellectual Property Code; infringement of Article 73 of Regulation No 40/94 (now Article 75 [of Regulation No 207/2009]), in that the Board of Appeal committed a number of errors in law and of assessment as regards the evidence of genuine use of the earlier mark under Class 25.

Incorrect application of Article 52(1)(a) and Article 8(1)(b) of Regulation No 40/94 and infringement of Article 53 of Regulation No 40/94 and [the following] provisions of French law: Article 2262 of the Civil Code and Article L714(3) of the French Intellectual Property Code, in that the assessment by the Board of Appeal of the likelihood of confusion is incorrect.

Infringement of Article 62(1) of Regulation No 40/94, in that the Board of Appeal was not entitled to limit its examination to only the prior right existing under mark No 1594704, after having decided to exercise the powers of the Cancellation Division, nor to refer the case back to the Cancellation Division to rule on the other rights relied on, which had already been examined.

Action brought on 23 February 2012 — Gas v OHIM — Grotto (BLUE JEANS GAS)

(Case T-93/12)

(2012/C 126/42)

*Language in which the application was lodged: French***Parties***Applicant:* André Pierre Gas (Marseille, France) (represented by: L. Levy, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* Grotto SpA (Chiuppano, Italy)**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 7 December 2011 in Case R 620/2009-1 in its entirety and refer the case back to OHIM to be reconsidered in the light of the decision to be made;