

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: Community trade mark registration No 6070981 of the figurative mark 'GO GLORIA ORTIZ', for goods in class 3

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The Board of Appeal of the Office for Harmonisation in the Internal Market erred in law in failing to suspend the proceedings; and infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly found that there was a likelihood of confusion between the two trademarks.

Action brought on 30 March 2012 — Aventis Pharmaceuticals v OHIM — Fasel (CULTRA)

(Case T-142/12)

(2012/C 165/47)

Language in which the application was lodged: English

Parties

Applicant: Aventis Pharmaceuticals, Inc. (New Jersey, United States) (represented by: R. Gilbey, lawyer)

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

Other party to the proceedings before the Board of Appeal: Fasel Srl (Bologna, 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 26 January 2012 in case R 2478/2010-1;
- The Court is invited to provide its opinion and reasons, as regards the similarity of signs, had the correct facts and tests been applied by the Board of Appeal; and
- Order the losing party to pay the costs incurred by the applicant in the present proceedings and in the previous proceedings.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark 'CULTRA', for goods in class 10 — Community trade mark application No 7534035

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: Czech trade mark registration No 301724 of the word mark 'SCULPTRA', for goods and services in classes 5, 10 and 44; German trade mark registration No 30406574 of the word mark 'SCULPTRA', for goods and services in classes 5, 10 and 44; Finish trade mark registration No 233638 of the word mark 'SCULPTRA', for goods and services in classes 5, 10 and 44; UK trade mark registration No 2355273 of the word mark 'SCULPTRA', for goods and services in classes 5, 10 and 44; Hungarian trade mark registration No 183214 of the word mark 'SCULPTRA', for goods and services in classes 5, 10 and 44

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Rule 50 of Commission Regulation No 2868/95 and Article 76(2) of Council Regulation No 207/2009, as the Board of Appeal: (i) based its reasoning and decision on a fact that was not alleged or submitted by the parties, nor referred to in the contested decision, namely that the contested sign will primarily or exclusively be perceived as 'ULTRA' with a rounded figurative element; (ii) failed to address important arguments and evidence submitted by the applicant, regarding conceptual similarity, failed to compare correctly the signs with regard to their overall impression, and failed accordingly to apply the global comparison rule, as defined by the Court of Justice; (iii) failed to proceed to an evaluation of likelihood of confusion based on the sole facts that were placed before it; and (iv) failed to take into account in a legally sustainable manner the interdependence of relevant global factors, in particular, the identity or similarity of the goods and services, and the similarity between the signs.

Action brought on 30 March 2012 — Germany v Commission

(Case T-143/12)

(2012/C 165/48)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: T. Henze, K. Petersen and U. Soltész, lawyer)

Defendant: European Commission