

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 the principle of legality;
- Infringement of Article 15(1)(a) of Council Regulation No 207/2009 and Rule 22(3) of Commission Regulation No 2868/95 and consequently also Articles 8(1)(a), 42(2) and (3) of Council Regulation No 207/2009.

Action brought on 29 May 2012 — Airbus v OHIM (NEO)

(Case T-236/12)

(2012/C 243/42)

Language of the case: English

Parties

Applicant: Airbus SAS (France) (represented by: G. Würtenberger and R. Kunze, lawyers)

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

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 23 February 2012 in case R 1387/2011-1;
- Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'NEO' for goods and services in classes 7, 12, and 39 — Community trade mark application No 9624974

Decision of the Examiner: Partially refused to register the community trade mark application

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law:

- Infringement of Articles 64(1) and 59 of Council Regulation No 207/2009;
- Infringement of Articles 7(1)(b), 7(1)(c) and 7(2) of Council Regulation No 207/2009; and

— Infringement of Articles 75 and 76 of Council Regulation No 207/2009.

Action brought on 4 June 2012 — Gamesa Eólica v OHIM — Enercon (horizontal combination of green colours)

(Case T-245/12)

(2012/C 243/43)

Language in which the application was lodged: English

Parties

Applicant(s): Gamesa Eólica, SL (Sarriguren, Spain) (represented by: E. Armijo Chávarri and A. Sanz Cerralbo, lawyers)

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

Other party to the proceedings before the Board of Appeal: Enercon GmbH (Aurich, Germany)

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 1 March 2012 in case R 260/2011-1;
- Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark representing a horizontal combination of green colours, for goods in class 7 — Community trade mark registration No 2346542

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 party requesting the declaration of invalidity based its request on Article 52(1)(a) and on Article 52(1)(b) of Council Regulation (EC) No 207/2009

Decision of the Cancellation Division: Declared the Community trade mark invalid

Decision of the Board of Appeal: Annulled the contested decision and rejected the request for a declaration of invalidity