

Contested decision: Decision of the Second Board of Appeal of OHIM of 22 December 2014 in Case R 1798/2014-2

Form of order sought

The applicant claims that the Court should:

- annul the contested decision insofar as it upheld the conclusion of the examiner that the mark applied for *prima facie* lacked distinctive character for the goods and services in question;
- allow the community trade mark application no. 11 867 173 to proceed to publication;
- order OHIM to pay the costs.

Plea in law

- Infringement of Article 7(1)(b) of Regulation No 207/2009.

Action brought on 25 February 2015 — Tubes Radiatori v OHIM — Antrax It (Heating radiators)

(Case T-98/15)

(2015/C 138/78)

Language in which the application was lodged: Italian

Parties

Applicant: Tubes Radiatori Srl (Resana, Italy) (represented by: S. Verea, K. Muraro, M. Balestriero and P. Menapace, lawyers)

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

Other party to the proceedings before the Board of Appeal: Antrax It Srl (Resana, Italy)

Details of the proceedings before OHIM

Proprietor of the design at issue: Applicant

Design at issue: Community design for 'heating radiators' — Community design No 169 370-0002

Contested decision: Decision of the Third Board of Appeal of OHIM of 9 December 2014 in Case R 1643/2014-3

Form of order sought

The applicant claims that the Court should:

- annul the contested decision and, consequently, find and declare that Community design No 169 370-0002, belonging to Tubes Radiatori Srl, is valid, since it is new and has individual character;
- order OHIM to pay the costs pursuant to Article 87 of the Rules of Procedure of the General Court of the European Union.

Pleas in law

- Infringement of Article 1d of Regulation (EC) No 216/96, the adversarial principle, and the duty to provide a statement of reasons;
- Objection of *res judicata*.

Action brought on 26 February 2015 — Red Bull v OHIM — Optimum Mark (Representation of the colours blue and silver)**(Case T-101/15)**

(2015/C 138/79)

*Language in which the application was lodged: English***Parties***Applicant:* Red Bull GmbH (Fuschl am See, Austria) (represented by: A. Renck, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*Other party to the proceedings before the Board of Appeal:* Optimum Mark (Warsaw, Poland)**Details of the proceedings before OHIM***Proprietor of the trade mark at issue:* Applicant*Trade mark at issue:* Representation of the colours blue and silver — Community trade mark registration No 2 534 774*Procedure before OHIM:* Proceedings for a declaration of invalidity*Contested decision:* Decision of the First Board of Appeal of OHIM of 2 December 2014 in Case R 2037/2013-1**Form of order sought**

The applicant claims that the Court should:

- Annul the contested decision;
- Order OHIM and the other party to the proceedings before the Board of Appeal of OHIM, should it intervene, to pay the costs.

Pleas in law

- Infringement of Articles 4, 7(1)(a) and 52(1)(a) of Regulation No 207/2009;
- Infringement of the principle of legitimate expectations established by the Court of Justice under Community law.

Action brought on 26 February 2015 — Red Bull v OHIM — Optimum Mark (Representation of the colours blue and silver)**(Case T-102/15)**

(2015/C 138/80)

*Language in which the application was lodged: English***Parties***Applicant:* Red Bull GmbH (Fuschl am See, Austria) (represented by: A. Renck, lawyer)