Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark ‘promodoro’, for goods and services in classes 25, 28 and 35 — application No 3 587 557

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: United Kingdom trade mark registration of the word mark ‘POMODORO’ for goods in class 25

Decision of the Opposition Division: Partially rejected the application

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law:

Infringement of Rule 22 of Commission Regulation No 2868/95 (1) as the Board of Appeal wrongly took into account proof of use submitted out of time by the other party to the proceedings before the Board of Appeal; Infringement of Article 43(2) of Council Regulation 40/94 as the Board of Appeal failed to conclude that the evidence submitted by the other party to the proceedings before the Board of Appeal within the required time limit did not constitute sufficient proof of use of the trade mark cited in the opposition proceedings; Infringement of Article 8(2) of Council Regulation 40/94 as the Board of Appeal wrongly held that there was a likelihood of confusion between the trade marks in question.


Action brought on 13 March 2009 — adp Gauselmann v OHIM — Maclean (Archer Maclean’s Mercury)

(Case T-106/09)

(2009/C 113/80)

Language in which the application was lodged: English

Parties

Applicant: adp Gauselmann GmbH (Espelkamp, Germany) (represented by: P. Koch Moreno, lawyer)

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

Other party to the proceedings before the Board of Appeal: Archer Maclean (Banbury, United Kingdom)

Form of order sought

— Declare non-conformity of the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 January 2009 in case R 1266/2007-1 with Council Regulation 40/94;

— Declare that Community trade mark application No 4 290 227 for classes 9 and 28 falls within the prohibition contained in Article 8(1)(b) of Council Regulation 40/94; and

— Order OHIM and, as appropriate, the intervener in the proceedings to pay the costs.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark ‘Archer Maclean’s Mercury’, for goods in classes 9, 16 and 28 — application No 4 290 227

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

Mark or sign cited: German trade mark registration of the word mark ‘Merkur’ for goods and services in classes 6, 9, 28, 35, 37, 41 and 42

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law:

Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal wrongly concluded that there were no visual, phonetic or conceptual identity similarities between the trade marks concerned, as well as that there was no identity of goods for classes 9 and 28, and therefore no likelihood of confusion between the trade marks concerned.

Action brought on 12 March 2009 — United Kingdom v Commission

(Case T-107/09)

(2009/C 113/81)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: V. Jackson, agent assisted by T. Eicke, Barrister)

Defendant: Commission of the European Communities

Form of order sought

— annul Commission decision 2008/960/EC of 8 December 2008 excluding from Community financing certain expenditure incurred by the Member States under Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and under the European Agricultural Guarantee Fund (EAGF) (1) in part, namely in so far as it has the effect of applying a correction to the Fruit and Vegetable aid scheme against the United Kingdom for alleged weaknesses in its control system concerning the recognition of POs created before 2002 (not providing technical means) and

— order the Commission to pay the costs of proceedings.

Pleas in law and main arguments

By means of present application, the applicant seeks the partial annulment of Commission decision 2008/960/EC of 8 December 2008 excluding from Community financing certain expenditure incurred by the Member States under Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and under the European Agricultural Guarantee Fund (EAGF) on the ground that the Commission wrongly interpreted and applied Article 11(2)(d) of Council Regulation No 2200/96 (1) in finding that the United Kingdom government had failed to observe the conditions laid down in that provision for the recognition of Producers Organisation in the fruit and vegetable sector.

The applicant contends that the Commission’s restrictive interpretation of Article 11(2)(d) of Council Regulation 2200/96 underlying the relevant aspects of the contested decision is inconsistent both with the language and with the object and purpose of that provision.


Action brought on 17 March 2009 — Rintisch v OHIM — Valfeuri Pates Alimentaires (PROTIVITAL)

(Case T-109/09)

(2009/C 113/82)

Language in which the application was lodged: English

Parties

Applicants: Bernhard Rintisch (Bottrop, Germany) (represented by: A. Dreyer, lawyer)
Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)
Other party to the proceedings before the Board of Appeal: Valfeuri Pates Alimentaires SA (Wittenheim, France)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 January 2009 in case R 1660/2007-4 and approve for registration for goods in class 25 the Community trade mark concerned; and
— Order OHIM to pay the costs

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal
Community trade mark concerned: The word mark ‘PROTIVITAL’, for goods in classes 5, 29 and 30 — application No 4 843 331
Proprietor of the mark or sign cited in the opposition proceedings: The applicant
Mark or sign cited: German trade mark registration of the word mark ‘PROTI’ for goods in classes 29 and 32; German trade mark registration of the figurative mark ‘PROTIPOWER’ for goods in classes 5, 29 and 32; German trade mark registration of the trade mark ‘PROTIPLUS’ for goods in classes 5, 29 and 32; German trade mark registration of the trade word ‘PROTITOP’ for goods in classes 5, 29, 30 and 32; Community trade mark registration of the word mark ‘PROTI’ for goods in classes 5 and 29

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal failed to assess the opposition on its merits; Infringement of Article 74(2) of Council Regulation 40/94 as the Board of Appeal failed to exercise discretion or at least failed to state reasons how it exercised discretion; Misuse of power as the Board of Appeal erred by not taking into account documents and evidence submitted by the applicant.

Action brought on 19 March 2009 — Icebreaker v OHIM — Gilmar (ICEBREAKER)

(Case T-112/09)

(2009/C 113/83)

Language in which the application was lodged: English

Parties

Applicants: Icebreaker Ltd (Wellington, New Zealand) (represented by: L. Prehn, lawyer)
Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)
Other party to the proceedings before the Board of Appeal: Gilmar SpA (San Giovanni in Marignano (Rimini), Italy)

Form of order sought

— Reverse the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 January 2009 in case R 1536/2007-4 and approve for registration for goods in class 25 the Community trade mark concerned; and
— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant
Community trade mark concerned: The word mark ‘ICEBREAKER’, for goods in classes 9, 24 and 25 — application No 3 205 523
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: Italian trade mark registration of the word mark ‘ICEBERG’ for goods in class 25; International trade mark registration of the word mark ‘ICEBERG’ for goods in class 25; Spanish trade mark registration of the word mark ‘ICBERG’ for goods in class 25; Italian trade mark registration of the word mark ‘ICE’ for goods in class 25; International trade mark registration of the word mark ‘ICE’ for goods in class 25

Decision of the Opposition Division: Partially allowed the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal wrongly concluded that there is a likelihood of confusion between the trade marks concerned.