



Judgment of the General Court of 6 March 2024 - Lidl Stiftung v EUIPO - MHCS (Shade of the colour orange)

(Case T-652/22) (¹)

(EU trade mark – Invalidity proceedings – EU trade mark consisting in a shade of orange – Absolute ground for invalidity – Graphic representation that is sufficiently clear and precise – Article 4 and Article 7(1)(a) of Regulation (EC) No 40/94 (now Article 4 and Article 7(1)(a) of Regulation (EU) 2017/1001) – Distinctive character acquired through use – Article 7(1)(b) and (3) of Regulation No 40/94 (now Article 7(1)(b) and (3) of Regulation 2017/1001))

(C/2024/2759)

Language of the case: English

Parties

Applicant: Lidl Stiftung & Co. KG (Neckarsulm, Germany) (represented by: M. Kefferpütz, K. Wagner and A. Wrage, lawyers)

Defendant: European Union Intellectual Property Office (represented by: T. Klee, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: MHCS (Épernay, France) (represented by: O. Vrins, B. Raus and N. Clarembaux, lawyers)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 16 August 2022 (Case R 118/2022-4).

Operative part of the judgment

The Court:

1. Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 16 August 2022 (Case R 118/2022-4);
2. Dismisses the action as to the remainder;
3. Orders EUIPO, in addition to bearing its own costs, to pay those incurred by Lidl Stiftung & Co. KG, including those incurred before the Board of Appeal;
4. Declares that MHCS is to bear its own costs.

(¹) OJ C 472, 12.12.2022.