

Pleas in law: incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark ⁽¹⁾, inasmuch as it found that the signs in conflict are phonetically, conceptually and visually different.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 8(1), Article 73 and Article 74(1), *in fine*, of Regulation (EC) No 40/94 ⁽¹⁾.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 20 July 2007 — Secure Computing v OHIM — Investronica (SECUREOS)

(Case T-277/07)

(2007/C 235/25)

Language in which the application was lodged: German

Parties

Applicant: Secure Computing Corporation (Minnesota, United States) (represented by: H. P. Kunz-Hallstein and R. Kunz-Hallstein, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Investronica, SA

Form of order sought

- annul the decision of the First Board of Appeal of OHIM of 25 April 2007 in Case R 1063/2006-1;
- order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: The word mark 'SECUREOS' for goods in Class 9 (Application No 2 659 944).

Proprietor of the mark or sign cited in the opposition proceedings: Investronica, S.A.

Mark or sign cited in opposition: The word mark 'SECUREURO' (Community trade mark No 2 126 290) for goods and services in Classes 7, 9, 16, 35, 36, 37 and 42 and the figurative mark 'secureuro' (Community trade mark No 2 418 135) for goods and services in Classes 7, 9, 16, 35 and 36.

Decision of the Opposition Division: Grant of the opposition and rejection of the application.

Action brought on 18 July 2007 — Sepracor v OHIM — Laboratorios Ern (LEVENIA)

(Case T-280/07)

(2007/C 235/26)

Language in which the application was lodged: English

Parties

Applicant: Sepracor, Inc. (Malborough, United States) (represented by: E. De Gryse, E. Cornu, D. Moreau, lawyers)

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

Other party to the proceedings before the Board of Appeal: Laboratorios Ern, SA (Barcelona, Spain)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office of Harmonisation in the Internal Market of 18 April 2007 in Case R 155/2006-1;
- order the Office to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: Sepracor, Inc.

Community trade mark concerned: The Community word mark 'LEVENIA' for goods in class 5 — application No 2 563 799

Proprietor of the mark or sign cited in the opposition proceedings: Laboratorios Ern, SA

Mark or sign cited: The national word mark 'LEVELINA' for goods in classes 1 and 5

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

Decision of the Board of Appeal: Upheld the appeal