

Pleas in law and main arguments

Community trade mark concerned: Word mark 'PASSION FOR BETTER FOOD' for goods in classes 5, 29 and 30 (Application for registration No 5 039 946).

Decision of the Examiner: Application dismissed.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 7(1)(b) of Regulation (EC) No 40/94, ⁽¹⁾ as the trade mark applied for is sufficiently distinctive.

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

Action brought on 26 June 2008 — Associazione Giullemanidallajuve v Commission

(Case T-254/08)

(2008/C 223/93)

Language of the case: French

Parties

Applicant: L'Associazione Giullemanidallajuve (Garibaldi, Italy) (represented by: L.Misson, G. Ernes and A. Kettels, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- declare that the Commission has failed to act;
- instruct the Commission to use its powers and to reply to the complaint lodged by the applicant in May 2007;
- obtain all the information necessary for that purpose.

Pleas in law and main arguments

The applicant claims that the Commission failed to fulfil its obligation to act in that after being invited to do so it did not express its opinion on the complaint lodged by the applicant with the Commission in May 2007 concerning alleged contraventions of Articles 81 and 82 EC committed by the Federazione Italiana Giuoco Calcio (FIGC), the Comitato Olimpico Nazionale Italiano (CONI), the Union of European Football Associations (UEFA) and the Fédération Internationale de Football Association (FIFA).

The applicant considers that the letter which was sent to it by the Commission in March 2008 further to the invitation to act and which informed it that the case was being dealt with, does

not represent an expression of opinion, since the letter did not provide any replies on the substance of the requests made by the applicant.

The applicant also claims that, in the area of competition, a complainant is entitled to expect that its complaint will be examined thoroughly by the Commission, and that a reasoned opinion will be expressed.

Action brought on 30 June 2008 — Biotronik v OHIM (BioMonitor)

(Case T-257/08)

(2008/C 223/94)

Language of the case: German

Parties

Applicant: Biotronik Meß- und Therapiegeräte GmbH (Berlin, Germany) (represented by: U. Sander and R. Böhm, lawyers)

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

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 24 April 2008 in Case No R 466/2007-4;
- Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'BioMonitor' for goods and services in Classes 9, 10 and 38, in which the additional list of goods for Class 10 would be restricted (Application No 4 556 023).

Decision of the Examiner: Application rejected.

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

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 ⁽¹⁾ in that the trade mark applied for does not lack distinctive character and it is not a descriptive term.

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