Pleas in law and main arguments

Applicant for the Community trade mark: The applicant (formerly Mission Pharmacal Company)

Community trade mark concerned: The word mark 'CITRACAL' for goods in class 5, application No 1 757 855

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal (formerly Laboratorios Diviser-Aquilea, SL)

Mark or sign cited: Spanish trade mark registration No 223 532 of the mark 'CICATRAL' for goods in classes 1 and 5

Decision of the Opposition Division: Uphold the opposition with respect to all the contested goods

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The Board of Appeal erred in its assessment of the evidence of proof-of-use, and in particular on the issue of the provision of a suitable translation of the goods in relation to which the mark cited in the opposition proceedings was used. Further, the Board of Appeal erred in its assessment of the existence of a likelihood of confusion between the conflicting trade marks.

Action brought on 21 July 2008 — People's Mojahedin of Iran v Council

(Case T-284/08)

(2008/C 236/27)

Language of the case: English

Parties

Applicant: People's Mojahedin Organization of Iran (Auvers sur Oise, France) (represented by: J.-P. Spitzer, lawyer and D. Vaughan, QC)

Defendant: Council of the European Union

Form of order sought

— To annul Decision 2008/583/EC of the Council insofar as it applies to the applicant;

— To order the defendant to pay the applicant's costs.

Pleas in law and main arguments

The applicant seeks, pursuant to Article 230 EC, partial annulment and in so far as it concerns the applicant, of Council Decision 2008/583/EC of 15 July 2008 ([1]) ('the contested decision') implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2007/868/EC.

In support of its application, the applicant submits that the contested decision should be annulled because, in so far as it relates to the inclusion of the applicant on the list of terrorist organisations, there was no relevant decision at the time from a competent national authority sufficient to form any justification for the decision. In addition, the applicant claims that the decision should be annulled because while it was said to be based on 'new information' and on a decision from a competent authority other than that of the United Kingdom, the evidence on which the Council relied was not disclosed to the applicant before adopting the decision. Further, the applicant claims that no justification was given as to why such information was to be treated as new, or relevant.

The applicant puts forward that the contested decision was taken without any proper evaluation of the new information and on whether that constituted concrete and reliable evidence upon which the Council was entitled to act, in order to prove that the applicant was engaged in terrorism.

Furthermore, the applicant contends that the contested decision was adopted in violation of the applicant's right to be heard and its fundamental rights. The applicant submits, finally, that the contested decision was adopted in circumstances which amounted to an abuse or misuse of procedures and/or powers.

([1]) OJ 2008 L 188, p. 21.

Action brought on 23 July 2008 — Inditex v OHIM

(Case T-292/08)

(2008/C 236/28)

Language in which the application was lodged: Spanish

Parties

Applicant: Industria de Diseño Textil, SA (Inditex) (Arteixo, Spain) (represented by: E. Armijo Chávarri and A. Castán Pérez-Gómez, 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: Roberto Fernando Marín Díaz de Cerio (Logroño, Spain)

Form of order sought

— Declare the action against the Decision of the Second Board of Appeal of OHIM of 24 April 2008 lodged in time and in the required form and, via the appropriate procedure, order the annulment of that decision in respect of all or part of the goods refused.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark 'OFTEN' (application No 2 798 270) for goods and services in Classes 3, 9, 14, 16, 18, 25 and 35.

Proprietor of the mark or sign cited in the opposition proceedings: Roberto Fernando Marín Díaz de Cerio.

Mark or sign cited in opposition: Spanish word and figurative marks 'OLTEN' and Spanish figurative mark 'OLTENWATCH' for goods in Class 14.

Decision of the Opposition Division: Upholding in part of the opposition.

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

Pleas in law: Principally, infringement of Articles 61(1) and 62(1) of Regulation (EC) No 40/94 on the Community trade mark and, as a subsidiary plea, infringement of Articles 43(2) and 8(1)(b) of that regulation.