

Decision of the Cancellation Division: Rejection of the application for a declaration of invalidity of the trade mark concerned.

Decision of the Board of Appeal: Annulment of the decision of the Cancellation Division and granting of the application for a declaration of invalidity of the trade mark concerned.

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation No 40/94, since the trade mark 'Notfall Bonbons' is not descriptive of the protected goods, nor does it lack the requisite distinctive character.

Action brought on 10 September 2008 — Aldi Einkauf v OHIM — Illinois Tools Works (TOP CRAFT)

(Case T-374/08)

(2008/C 313/63)

Language in which the application was lodged: German

Parties

Applicant: Aldi Einkauf GmbH & Co. OHG (Essen, Germany) (represented by: N. Lützenrath, U. Rademacher, L. Kolks and C. Fürsen, 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: Illinois Tools Works, Inc. (Glenview, United States)

Form of order sought

- annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 June 2008 in Case No R 952/2007-2;
- order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Aldi Einkauf GmbH & Co. OHG

Community trade mark concerned: the figurative mark 'TOP CRAFT' for goods in Classes 1 and 3 (Application No 3 444 767)

Proprietor of the mark or sign cited in the opposition proceedings: Illinois Tools Works, Inc.

Mark or sign cited in opposition: The national figurative marks 'krafft' for goods in Classes 1 and 3

Decision of the Opposition Division: Opposition upheld in part

Decision of the Board of Appeal: Annulment of the Opposition Division's decision in so far as the opposition in respect of the goods 'Chemicals used in agriculture, horticulture and forestry' in Class 1 was upheld

Pleas in law: Infringement of Article 8(1)(b) and Article 43(2) and (3) of Council Regulation No 40/94 and of Rule 22(3) of Commission Regulation No 2868/95 because:

- the documents submitted by the opponent cannot prove use of the opposing marks,
- there are significant graphical differences between the marks at issue,
- the word element 'TOP' is not descriptive and of slight distinctive character, and
- owing to the clear graphical differences and the additional word element 'TOP' in the mark applied for, a likelihood of confusion may be ruled out even if the goods are identical or similar.

Action brought on 11 September 2008 — Mustang v OHIM

(Case T-379/08)

(2008/C 313/64)

Language in which the application was lodged: German

Parties

Applicant: Mustang-Bekleidungswerke GmbH + Co. KG (Künzelsau, Germany) (represented by: A. Klett and K. Weimer, 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: Decathlon SA (Villeneuve d'Ascq, 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 8 July 2008 in Case R 859/2007-4;
- order the defendant to pay the costs of these proceedings and the proceedings before the Board of Appeal, including the applicant's costs in both proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Mustang

Community trade mark concerned: Representation of a wavy line for goods and services in Classes 3, 18 and 25 (Application No 4 081 352)

Proprietor of the mark or sign cited in the opposition proceedings: Decathlon SA

Mark or sign cited in opposition: Existing national and international figurative mark constituted by the representation of a white wavy line on a black background, for goods in Classes 3, 18 and 25.

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Rejection of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94, because there are no aural, visual and conceptual similarities between the opposing marks that could give rise to a likelihood of confusion.

to growers and undertakings having restructured in the 2006/07 and 2007/08 marketing years;

— an order that the Commission should pay the costs.

Pleas in law and main arguments

Infringement of Article 1(1)(c) of Regulation (EC) No 1261/2007 ⁽²⁾ and of Article 16a of Regulation (EC) No 1264/2007 ⁽³⁾.

Breach of the principles of equality, legal certainty and of the non-retroactive effect of laws.

⁽¹⁾ OJ 2008 L 156, p. 20.

⁽²⁾ Council Regulation (EC) No 1261/2007 of 9 October 2007 amending Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community.

⁽³⁾ Commission Regulation (EC) No 1264/2007 of 26 October 2007 amending Regulation (EC) No 968/2006 laying down detailed rules for the implementation of Council Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community.

Action brought on 15 September 2008 — DAI v Commission

(Case T-381/08)

(2008/C 313/65)

Language of the case: Portuguese

Parties

Applicant: DAI — Sociedade de Desenvolvimento Agro-Industrial, SA (Coruche, Portugal) (represented by: J. da Cruz Vilaça, L. Romão and A. Mestre, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- A declaration that the action is admissible;
- a decision allowing the action and annulment in part of Commission Decision 2008/445/EC of 11 June 2008 fixing the amounts per Member State of retroactive restructuring aid for growers and undertakings having restructured in the 2006/07 and 2007/08 marketing years in the framework of the temporary scheme for the restructuring of the sugar industry of the Community (notified under document number C(2008) 2557) ⁽¹⁾, in so far as it refers to the amount of restructuring aid allocated to Portugal to be paid

Action brought on 15 September 2008 — Nadine Trautwein Rolf Trautwein v OHIM (Representation of a dog)

(Case T-385/08)

(2008/C 313/66)

Language in which the application was lodged: German

Parties

Applicant: Nadine Trautwein Rolf Trautwein GbR, Research Development (Leopoldshöhe, Germany) (represented by C. Czychowski, A. Nordemann and A. Dustmann)

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

Form of order sought

- annul Decision R 1734/2007-1 of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade marks and Designs) of 30 June 2008, together with the decision of the examiner of 25 September 2007 to the extent that protection was refused for the application for Community trade mark 4829321 for goods 'leather goods included in Class 18; bags' in Class 18 and 'foodstuffs for animals and drinks for domestic animals' in Class 31;