

Action brought on 24 November 2008 — Bang & Olufsen v OHIM (Representation of a loudspeaker)

(Case T-508/08)

(2009/C 19/65)

Language of the case: English

Parties

Applicant(s): Bang & Olufsen A/S (Struer, Denmark) (represented by K. Wallberg, lawyer)

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

Form of order sought

— Annul paragraph 2 the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 September 2008 in case R 497/2005-1; and

— Order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The three-dimensional mark representing a loudspeaker for goods in classes 9 and 20 — application No 3 354 371

Decision of the examiner: Rejection of the application

Decision of the Board of Appeal: Partial annulment of the decision of the examiner

Pleas in law: Infringement of Article 63(6) of Council Regulation No 40/94 as the Board of Appeal failed to take the necessary measures to comply with the judgment of the Court of Justice; Infringement of Article 7(1)(e)(iii) of Council Regulation No 40/94 as the Board of Appeal wrongly took the view that the Community trade mark concerned is a sign which consists exclusively of a shape which gives substantial value to the goods.

Action brought on 20 November 2008 — Toqueville v OHIM — Schiesaro (TOCQUEVILLE 13)

(Case T-510/08)

(2009/C 19/66)

Language in which the application was lodged: Italian

Parties

Applicant: Toqueville Srl (Milan, Italy) (represented by: S. Bariatti, I. Palombella and E. Cucchiara, 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: Marco Schiesaro (Milan, Italy)

Form of order sought

— Annul the decision of the Second Board of Appeal of OHIM of 26 August 2008 in Case R 829/2008-2 Toqueville Srl v M. Schiesaro.

— Order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: word mark 'TOCQUEVILLE 13' (Community trade mark No 1.406.982) to designate goods and services in Classes 25, 41 and 42.

Proprietor of the Community trade mark: the applicant.

Applicant for the declaration of invalidity: Marco Schiesaro.

Decision challenged before the Board of Appeal: the decision of the Cancellation Division to grant the application for partial revocation of the trade mark in question.

Decision of the Board of Appeal: declaration that the appeal is inadmissible and rejection of a request for *restitutio in integrum* as regards the time-limit for filing an appeal against the decision of the Cancellation Division.

Pleas in law: Infringement of Articles 73 and 78 if Regulation (EC) No 40/94 on the Community trade mark, Articles 2 and 9 of Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market and Article 50 of Regulation (EC) No 2868/95 implementing Regulation (EC) No 40/94.

Action brought on 26 November 2006 — Laboratorios Byly v OHIM — Ginis (BILLY'S Products)

(Case T-514/08)

(2009/C 19/67)

Language in which the application was lodged: Spanish

Parties

Applicant: Laboratorios Byly, SA (Barcelona, Spain) (represented by: L. Plaza Fernandez-Villa, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Vasileios Ginis (Athens, Greece)

Form of order sought

- The contested decision be annulled;
- the defendant be ordered to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Vasileios Ginis.

Community trade mark concerned: Figurative mark 'BILLY'S products' (application No 4.215.273) for goods in Class 3.

Proprietor of the mark or sign cited in the opposition proceedings: Laboratorios Byly.

Mark or sign cited in opposition: Community word marks 'BYLY' (application No 156.216) for goods in Class 3, and 'byly' (application No 2.604.015) for goods in Classes 3 and 5, and services in Class 35.

Decision of the Opposition Division: Opposition rejected.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Incorrect interpretation of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark.

Order of the Court of First Instance of 19 November 2008
— UPC v Commission

(Case T-367/05) ⁽¹⁾

(2009/C 19/68)

Language of the case: French

The President of the Fourth Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 315, 10.12.2005.

Order of the Court of First Instance of 25 November 2008
— Commission v Northumbrian Water

(Case T-334/06) ⁽¹⁾

(2009/C 19/69)

Language of the case: English

The President of the Fourth Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 326, 30.12.2006.

Order of the Court of First Instance of 27 November 2008
— Kuiburi Fruit Canning v Council

(Case T-330/07) ⁽¹⁾

(2009/C 19/70)

Language of the case: English

The President of the First Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 269, 10.11.2007.

Order of the Court of First Instance of 27 November 2008
— Dow AgroSciences and Others v Commission

(Case T-367/07) ⁽¹⁾

(2009/C 19/71)

Language of the case: English

The President of the Court of First Instance (Second Chamber) has ordered that the case be removed from the register.

⁽¹⁾ OJ C 283, 24.11.2007.