

Judgment of the General Court of 13 April 2011 — United States Polo Association v OHIM — Textiles CMG (U.S. POLO ASSN.)

(Case T-228/09) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for Community word mark U.S. POLO ASSN. — Earlier Community and national word marks POLO-POLO — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2011/C 160/26)

Language of the case: English

Parties

Applicant: United States Polo Association (Lexington, Kentucky, United States) (represented by: P. Goldenbaum, I. Rohr and T. Melchert, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Botis, Agent)

Other party to the proceedings before the Board of Appeal of OHIM: Textiles CMG, SA (Onteniente, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 20 March 2009 (Case R 886/2008-4) relating to opposition proceedings between Textiles CMG, SA and United States Polo Association.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders United States Polo Association to pay the costs.

⁽¹⁾ OJ C 180, 1.8.2009.

Judgment of the General Court of 13 April 2011 — Safariland v OHIM — DEF-TEC Defense Technology (FIRST DEFENSE AEROSOL PEPPER PROJECTOR)

(Case T-262/09) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for the Community figurative mark FIRST DEFENSE AEROSOL PEPPER PROJECTOR — Relative ground for refusal — Article 8(3) of Regulation (EC) No 207/2009 — Implementation by OHIM of a judgment annulling a decision adopted by one of the OHIM Boards of Appeal — Rights of the defence — Obligation to state reasons — Articles 63(2), 65(6), 75 and 76 of Regulation No 207/2009)

(2011/C 160/27)

Language of the case: English

Parties

Applicant: Safariland LLC, formerly Defense Technology Corporation of America (Jacksonville, Florida, United States) (represented by: R. Kunze and G. Würtenberger, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Botis, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM: DEF-TEC Defense Technology GmbH (Frankfurt am Main, Germany) (represented: initially by H. Daniel and O. Haleen, and subsequently by O. Haleen, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 4 May 2009 (Case R 493/2002-4 (II)), relating to opposition proceedings between Defense Technology Corporation of America and DEF-TEC Defense Technology GmbH.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Safariland LLC to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and by DEF-TEC Defense Technology GmbH.

⁽¹⁾ OJ C 205, 29.8.2009.

Judgment of the General Court of 12 April 2011 — Fuller & Thaler Asset Management v OHIM (BEHAVIOURAL INDEXING and BEHAVIOURAL INDEX)

(Cases T-310/09 and T-383/09) ⁽¹⁾

(Community trade mark — Applications for Community word marks BEHAVIOURAL INDEXING and BEHAVIOURAL INDEX — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2011/C 160/28)

Language of the case: English

Parties

Applicant: Fuller & Thaler Asset Management, Inc. (San Mateo, United States) (represented by: S. Malynicz, Barrister)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Botis, acting as Agent)

Re:

ACTIONS brought, in Case T-310/09, against the decision of the Grand Board of Appeal of OHIM of 28 April 2009 (Case R 323/2008-G) concerning an application for registration of the word sign BEHAVIOURAL INDEXING as a Community trade mark and, in Case T-383/09, against the decision of the First Board of Appeal of OHIM of 11 June 2009 (Case R 138/2009-1) concerning an application for registration of the word sign BEHAVIOURAL INDEX as a Community trade mark.

Operative part of the judgment

The Court:

1. Orders that Cases T-310/09 and T-383/09 be joined for the purposes of the present judgment;
2. Dismisses the applications;
3. Orders Fuller & Thaler Asset Management, Inc., in Cases T-310/09 and T-383/09, to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).

(¹) OJ C 244, 10.10.2009.

Judgment of the General Court of 13 April 2011 — Bodegas y Viñedos Puerta de Labastida v OHIM — Unión de Cosecheros de Labastida (PUERTA DE LABASTIDA)

(Case T-345/09) (¹)

(Community trade mark — Opposition proceedings — Application for Community word mark PUERTA DE LABASTIDA — Earlier national word mark CASTILLO DE LABASTIDA — Earlier Community word marks CASTILLO LABASTIDA — Relative ground for refusal — Genuine use of the earlier mark — Article 42(2) and (3) of Regulation (EC) No 207/2009 — Likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009)

(2011/C 160/29)

Language of the case: Spanish

Parties

Applicant: Bodegas y Viñedos Puerta de Labastida, SL (Autol, Spain) (represented by: J. Grimau Muñoz and J. Villamor Muguerza, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Crespo Carillo, Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Unión de Cosecheros de Labastida, S. Coop. Ltda (Labastida, Spain) (represented: initially by P. López Ronda and G. Macias Bonilla and subsequently by F. Brandolini Kujman, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 28 May 2009 (Case R 1021/2008-1) concerning opposition proceedings between Unión de Cosecheros de Labastida, S. Coop. Ltda and Bodegas y Viñedos Puerta de Labastida, SL

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Bodegas y Viñedos Puerta de Labastida, SL to pay the costs.

(¹) OJ C 256, 24.10.2009.

Judgment of the General Court of 13 April 2011 — Sociedad Agricola Requiringua v OHIM — Consejo Regulador de la Denominación de Origen Toro (TORO DE PIEDRA)

(Case T-358/09) (¹)

(Community trade mark — Opposition proceedings — Application for Community word mark TORO DE PIEDRA — Earlier Community figurative mark D. ORIGEN TORO — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 — Right to be heard — Obligation to state the reasons on which a decision is based — Article 75 of Regulation No 207/2009)

(2011/C 160/30)

Language of the case: English

Parties

Applicant: Sociedad Agricola Requiringua Ltda (Santiago, Chile) (represented by: E. Vorbuchner, C. Ley and M. Heidelberg, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Crespo Carrillo and A. Folliard-Monguiral, Agents)

Other party to the proceedings before the Board of Appeal of OHIM: Consejo Regulador de la Denominación de Origen Toro (Toro, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 18 June 2009 (Case R 1117/2008-2) concerning opposition proceedings between Consejo Regulador de la Denominación de Origen Toro and Sociedad Agricola Requiringua Ltda.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Sociedad Agricola Requiringua Ltda to pay the costs.

(¹) OJ C 267, 7.11.2009.