

Action brought on 20 January 2009 — Katjes Fassin v OHIM (shape of a panda face)

(Case T-22/09)

(2009/C 69/107)

Language in which the application was lodged: German

Parties

Applicant: Katjes Fassin GmbH & Co. KG (Emmerich am Rhein, Germany) (represented by T. Schmitz, lawyer)

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

Form of order sought

- annul the decision of the Fourth Board of Appeal of OHIM of 13 November 2008 in Case R 1299/2006-4;
- order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: a three-dimensional mark, showing a chocolate panda face, for goods in Class 30 — Application No 4 505 161

Decision of the Examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Regulation No 40/94 ⁽¹⁾, as the registered mark has the necessary distinctive character.

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

Action brought on 19 January 2009 — Johnson & Johnson v OHIM — Simca (YourCare)

(Case T-25/09)

(2009/C 69/108)

Language in which the application was lodged: English

Parties

Applicant: Johnson & Johnson GmbH (Düsseldorf, Germany) (represented by: A. Gérard, lawyer)

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

Other party to the proceedings before the Board of Appeal: Simca Srl (Cesano Boscone (MI), Italy)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 November 2008 in case R 175/2008-1;
- Allow the opposition and reject the trade mark application No 4 584 587 for the figurative mark ‘YourCare’; and
- Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark ‘YourCare’, for goods in classes 3, 8 and 21

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: German trade mark registration No 2 913 574 of the word mark ‘Young Care’ for goods in classes 3 and 5; German trade mark registration No 30 416 018 of the figurative mark ‘bebe young care’ for goods and services in classes 3, 21 and 44; German trade mark registration No 30 414 452 of the word mark ‘Young Care’ for goods in class 21.

Decision of the Opposition Division: Allowed the opposition in its entirety and rejected the Community trade mark application

Decision of the Board of Appeal: Annulled the contested decision

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal wrongly assessed that there was no likelihood of confusion between the trade marks concerned; Infringement of Article 74(1) of Council Regulation 40/94 as the Board of Appeal failed to take into account factual evidence provided by the applicant.