

Decision of the Opposition Division: Partial acceptance of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The contested decision infringes Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009 ⁽¹⁾) in as much as there is no likelihood of confusion between the opposing marks.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 1 June 2009 — INEOS Healthcare v OHIM — Teva Pharmaceutical Industries (ALPHAREN)

(Case T-222/09)

(2009/C 180/112)

Language in which the application was lodged: English

Parties

Applicants: INEOS Healthcare Ltd (Warrington, United Kingdom) (represented by: S. Malynicz, Barrister and A. Smith, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Teva Pharmaceutical Industries Ltd (Jerusalem, Israel)

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 24 March 2009 in case R 1897/2007-2; and
- Order the defendant and the other party to the proceedings before the Board of Appeal to pay their own costs, as well as those of the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark “ALPHAREN”, for goods in class 5

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited: Hungarian trade mark registration of the word mark “ALPHA D3” for goods in class 5; Lithuanian trade mark registration of the word mark “ALPHA D3” for goods in class 5; Latvian trade mark registration of the word mark “ALPHA D3” for goods in class 5

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The Board of Appeal failed to take account of the fact that the other party to the proceedings before it had failed to adduce evidence of similarity between the respective goods; Infringement of Article 75 of Council Regulation 207/2009 and the right to be heard as the Board of Appeal wrongly based material parts of its decision on evidence on which the applicant was not provided with an opportunity to present its comments; Infringement of Article 76 of Council Regulation 207/2009 as the Board of Appeal, in proceedings relating to relative grounds for refusal of registration, failed to restrict itself to an examination of the facts, evidence and arguments provided by the parties and the relief sought; Infringement of Article 8(1)(b) of Council Regulation 207/2009 as the Board of Appeal erred in relation to the identification of the relevant public and overall in its assessment of the likelihood of confusion.

Action brought on 8 June 2009 — CLARO v OHIM — Telefónica (Claro)

(Case T-225/09)

(2009/C 180/113)

Language in which the application was lodged: Spanish

Parties

Applicant: CLARO, SA (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: Telefónica, SA (Madrid, Spain)

Form of order sought

- Annul the decision of the Second Board of Appeal of OHIM of 26 February 2009, in Case R 1079/2008-2, remit the case to that board for it to decide on it afresh, and order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: BCP S/A, now trading as CLARO, S.A., the applicant.

Community trade mark concerned: Three-dimensional trade mark containing the word element “CLARO” (application for registration No 5 229 241), for goods and services in Classes 9 and 38.