

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'CENTROTHERM' for goods and services in Classes 11, 17, 19 and 42 (Community trade mark No 1 301 019)

Proprietor of the Community trade mark: Centrotherm Systemtechnik GmbH

Applicant for the declaration of invalidity: The applicant

Decision of the Cancellation Division: Revocation of the Community trade mark

Decision of the Board of Appeal: Annulment in part of the decision of the Cancellation Division and partial revocation of the Community trade mark

Pleas in law: Infringement of Article 51(1)(a) of Regulation No 207/2009 ⁽¹⁾ in conjunction with Rule 40(5) and Rule 22(2) and (3) of Regulation (EC) No 2868/95, ⁽²⁾ in so far as the proof of use submitted by the proprietor of the trade mark was found to be sufficient so as to establish a genuine use of the trade mark at issue for the purposes of Article 15 of Regulation No 207/2009.

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

⁽²⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 29 October 2009 — TTNB v OHIM — March (Tila March)

(Case T-443/09)

(2009/C 312/66)

Language in which the application was lodged: French

Parties

Applicant: TTNB SARL (represented by: J.-M.Moiroux, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Juan Carmen March (Madrid, Spain)

Form of order sought

— Annul the decision of the Second Board of Appeal of OHIM of 20 August 2009 in Case R 1538/2008-2 and authorise the registration of the mark applied for;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Tamara Taichman, the applicant's predecessor

Community trade mark concerned: the word mark 'Tila March' for goods in Classes 3, 18 and 25 — application No 5 402 722

Proprietor of the mark or sign cited in the opposition proceedings: Carmen March Juan

Mark or sign cited in opposition: the Spanish word mark 'CARMEN MARCH' for goods and services in Classes 3, 18, 24, 25, 35 and 38. The opposition was brought against registration of the goods in Classes 3, 18 and 25

Decision of the Opposition Division: rejection of the opposition

Decision of the Board of Appeal: annulment of the decision of the opposition division

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) since there is no likelihood of confusion between the conflicting marks.

Action brought on 26 October 2009 — Centrotherm Systemtechnik v OHIM — centrotherm Clean Solutions (CENTROTHERM)

(Case T-434/09)

(2009/C 312/67)

Language in which the application was lodged: German

Parties

Applicant: Centrotherm Systemtechnik GmbH (Birlon, Germany) (represented by: J. Albrecht, 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: centrotherm Clean Solutions GmbH & Co KG (Blaubeuren, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of 25 August in Case R 6/2008-4, in so far as the application for a declaration of revocation was upheld;

— order the applicant to pay the costs

— order the possible intervener to pay the costs of the intervention.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark CENTROTHERM for goods and services in Classes 11, 17, 19 and 42 (Community trade mark No 1 301 019)

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity: centrotherm Clean Solutions GmbH & Co KG

Decision of the Cancellation Division: Revocation of the Community trade mark

Decision of the Board of Appeal: Annulment in part of the decision of the Cancellation Division and partial revocation of the Community trade mark

Pleas in law: Infringement of Article 57(5) in conjunction with Article 51(1) and (2) of Regulation (EC) No 207/2009 ⁽¹⁾, as the defendant did not adequately assess proof of use which was submitted within the time-limit;

Infringement of the duty to examine the facts of its own motion;

Infringement of Article 76(1) and (2) and Article 57(1) of Regulation No 207/2009 and of Rule 40(5) of Regulation (EC) No 2868/95 ⁽²⁾, since the defendant did not take into consideration the proof of use submitted with the grounds of appeal;

Incorrect exercise of discretion, since the evidence submitted, even in the event that it was submitted late, is to be taken into consideration;

In the alternative, inapplicability of Rule 40(5) of Regulation No 2868/95 under Article 241 EC, since this rule infringes Article 76(1) and Article 57(1) in conjunction with Article 51(1) and Article 162(1) of Regulation No 207/2009, Article 202 EC and general principles of Community law, in particular the legal principle of proportionality, the principle of property rights and the right to a fair trial.

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

⁽²⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 22 October 2009 — SE.RI.FO v Commission and Education, Audiovisual and Culture Executive Agency

(Case T-438/09)

(2009/C 312/68)

Language of the case: Italian

Parties

Applicant: Serifo Srl (Naples, Italy) (represented by: R. de Lorenzo, P. Kivel Mazuy and G. Ruberto, lawyers)

Defendants: Commission of the European Communities and Education, Audiovisual and Culture Executive Agency ('EACEA')

Form of order sought

— Annul the measure, the date and particulars of which are not known, by which, in the context of the Lifelong Learning Programme, the EACEA approved the list of projects selected for Community co-financing from the transversal programme 'KA3 ICT Multilateral Projects', and the reserve list, in so far as the project 'V-3DAS' No 505690-2009-LLP-IT-KA3-KA3MP, submitted by Se.Ri.Fo s.r.l., was included in the reserve list instead of in the list of projects selected for funding.

— Annul the notice of 21 September 2009, received on 22 September 2009, by which the EACEA communicated to Se.Ri.Fo s.r.l. the assessments of the 'V-3DAS' project issued by the experts external to the EACEA and the scores awarded.

Pleas in law and main arguments

The applicant took part in the Community Lifelong Learning Programme — Call for Proposals 2009, submitting to the EACEA the V-3DAS project in the context of the transversal programme Key Activity 3 'ICT'.

The assessment of the applications was undertaken by experts external to the Agency, in accordance with the Guide for Applicants 2009. After obtaining 30.5 points out of a maximum of 40 (76.3 % of the maximum score) — as compared with the 31 points necessary in order to be included in the list of projects selected for funding (77.5 % of the maximum score) — the project submitted by the applicant was included in the reserve list, which may be used for the award of additional grants if funds become available following withdrawal of approved projects or following an increase in the budget for the Programme.