

Third, the applicant contends that the contested decision infringes the principle of proportionality as reflected in Article 18(3) of Regulation 1/2003, according to which the Commission is empowered to require undertakings to provide all necessary information. In this regard, the applicant claims that the Commission failed to establish the required link between the requested pre-accession information and the allegedly illegal conduct after 1 May 2004. As a result, in the applicant's opinion, information or documents pertaining to the pre-accession period are not necessary in order to enable the Commission to assess whether the applicant's post-accession conduct complies with the EC law.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty; OJ L 1, p. 1

Action brought on 17 November 2009 –Storck v OHIM — RAI (Radiotelevisione)

(Case T-462/09)

(2010/C 11/68)

Language in which the application was lodged: German

Parties

Applicant: August Storck KG (Berlin, Germany) (represented by: I. Rohr, P. Goldenbaum and T. Melchert, 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: Radiotelevisione italiana SpA (RAI)(Rome, Italy)

Form of order sought

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 8 September 2009 in Case R 1779/2008 4;

— order OHIM to pay the costs;

— should there be an intervener in the proceedings, order the intervener to bear its own costs.

Pleas in law and main arguments

Applicant for a Community trade mark: August Storck KG

Community trade mark concerned: the word mark “Ragolizia” for good in Class 30 (Application No 5 201 835)

Proprietor of the mark or sign cited in the opposition proceedings: Radiotelevisione italiana SpA (RAI)

Mark or sign cited in opposition: Community trade mark No 4 771 762 “FAVOLIZIA”

Decision of the Opposition Division: Upheld the opposition and rejected the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 ⁽¹⁾, as there is no likelihood of confusion of the opposing trade 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 20 November 2009 — Herm. Sprenger v OHIM — Kieffer Sattlerwarenfabrik (form of a stirrup)

(Case T-463/09)

(2010/C 11/69)

Language in which the application was lodged: German

Parties

Applicant: Herm. Sprenger GmbH & Co. KG (Iserlohn, Germany) (represented by: V. Schiller, 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: Georg Kieffer Sattlerwarenfabrik GmbH (Munich, Germany)

Form of order sought

— set aside the decision delivered on 4 September 2009 by the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in Appeal Proceedings R 1614/2008-4;

— dismiss the application brought by the company Georg Kieffer Sattlerwarenfabrik GmbH for a declaration that the applicant's Community trade mark No 1 599 620 is invalid;

— order OHIM to pay the costs of the proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the three-dimensional Community trade mark No 1 599 620 for goods in Class 6

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity: Georg Kieffer Sattlerwarenfabrik GmbH

Decision of the Cancellation Division: dismissal of the application for a declaration of invalidity

Decision of the Board of Appeal: annulment of the decision of the Cancellation Division and declaration that the Community trade mark in issue is invalid

Pleas in law:

— Breach of Article 52(1)(a), in conjunction with Article 7(1), of Regulation (EC) No 207/2009 ⁽¹⁾ on the ground of an incorrect finding that the mark is devoid of any original distinctive character;

— Breach of Article 52(1)(a) and 52(2), in conjunction with Article 7(3), of Regulation (EC) No 207/2009 on the ground that it was wrongly assumed that the disputed mark had not acquired distinctive character through use;

— Breach of the first clause of Article 76(1) of Regulation No 207/2009 in that the relevant facts were not examined in the requisite manner;

— Breach of Article 83 of Regulation No 207/2009 in respect of the rights of the defence;

— Breach of Article 77(1) of Regulation No 207/2009 in that the Board of Appeal ought to have acceded to the applicant's alternative request for oral proceedings;

— Breach of the EC Treaty in respect of the basic right to equitable proceedings.

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

Order of the Court of First Instance (Fifth Chamber) of 30 October 2009 — Nestlé v OHIM — Quick (QUICKY)

(Case T-74/04) ⁽¹⁾

(2010/C 11/70)

Language of the case: French

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

⁽¹⁾ OJ C 94, 17.4.2004.

Order of the Court of First Instance of 13 November 2009 — Lumenis v OHIM (FACES)

(Case T-301/07) ⁽¹⁾

(2010/C 11/71)

Language of the case: English

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

⁽¹⁾ OJ C 247, 20.10.2007.

Order of the Court of First Instance (Third Chamber) of 16 November 2009 — Tipik v Commission

(Case T-252/08) ⁽¹⁾

(2010/C 11/72)

Language of the case: French

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

⁽¹⁾ OJ C 209, 15.8.2008.

Order of the Court of First Instance of 17 November 2009 — STIM d'Orbigny v Commission

(Case T-559/08) ⁽¹⁾

(2010/C 11/73)

Language of the case: French

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

⁽¹⁾ OJ C 44, 21.2.2009.