



Reports of Cases

Case T-320/10

(publication by extracts)

Fürstlich Castell'sches Domänenamt Albrecht Fürst zu Castell-Castell

v

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

(Community trade mark — Invalidation proceedings — Community word mark CASTEL — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 — Admissibility — Absolute ground for refusal not put forward before the Board of Appeal — Examination of the facts by OHIM of its own motion — Article 76(1) of Regulation (EC) No 207/2009)

Summary — Judgment of the General Court (Sixth Chamber), 13 September 2013

Community trade mark — Procedural provisions — Examination of the facts of the Office's own motion — Invalidation proceedings concerning absolute grounds for refusal — Examination restricted to the submissions of the parties

(Council Regulation No 207/2009, Arts 7(1), 52, 55 and 76(1))

Under Article 76(1) of Regulation No 207/2009, when considering absolute grounds for refusal, examiners of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and, on appeal, the Boards of Appeal of OHIM are required to examine the facts of their own motion in order to determine whether the mark registration of which is sought comes within one of the grounds for refusal of registration laid down in Article 7 of that regulation. It follows that the competent bodies of OHIM may be led to base their decisions on facts which have not been put forward by the applicant for the mark. OHIM is required to examine of its own motion the relevant facts which may lead it to apply an absolute ground for refusal.

In invalidity proceedings, however, OHIM cannot be required to carry out afresh the examination which the Examiner conducted, of his own motion, of the relevant facts which could have led him to apply the absolute grounds for refusal. It follows from the provisions of Articles 52 and 55 of Regulation No 207/2009 that the Community trade mark is regarded as valid until it has been declared invalid by OHIM following invalidity proceedings. It therefore enjoys a presumption of validity, which is the logical consequence of the check carried out by OHIM in the examination of an application for registration.

By virtue of that presumption of validity, OHIM's obligation, under Article 76(1) of Regulation No 207/2009, to examine of its own motion the relevant facts which may lead it to apply absolute grounds for refusal, is restricted to the examination of the application for a Community trade mark carried out by the Examiners of OHIM and, on appeal, by the Boards of Appeal during the procedure

for registration of that mark. In invalidity proceedings, as the registered Community trade mark is presumed to be valid, it is for the person who has filed the application for a declaration of invalidity to invoke before OHIM the specific facts which call the validity of that trade mark into question.

(see paras 26-28)