

Action brought on 5 February 2010 — The Footwear Co. Ltd v OHIM — Reno Schuhcentrum (swiss cross FOOTWEAR)

(Case T-49/10)

(2010/C 100/82)

Language in which the application was lodged: German

Parties

Applicant: The Footwear Co. Ltd (Chai Wan, Hong Kong, China) (represented by: G. Griss and C. Loidl, 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: Reno Schuhcentrum GmbH (Thaleischweiler-Fröschen, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 December 2009 in Case R 1705/2008-4;

— Reject definitively and in its entirety the opposition to registration of the mark applied for in respect of goods in Classes 25 and 28;

— Order the Office for Harmonisation in the Internal Market to grant registration of the mark applied for;

— Order the Office for Harmonisation in the Internal Market to pay the costs, including those incurred in the opposition proceedings and before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: The Footwear Co. Ltd

Community trade mark concerned: the word mark 'swiss cross FOOTWEAR' for goods in Classes 25 and 28 (Registration No 4 686 549)

Proprietor of the mark or sign cited in the opposition proceedings: Reno Schuhcentrum GmbH

Mark or sign cited in opposition: the German word mark 'criss cross' No 30 229 875 for goods in Classes 14, 18, 25 and 28

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Annulled the decision of the Opposition Division and rejected the Community trade mark application

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009,⁽¹⁾ since 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 5 February 2010 — Riesenthel v OHIM — Dynamic Promotion (Hampers, crates and baskets)

(Case T-53/10)

(2010/C 100/83)

Language in which the application was lodged: German

Parties

Applicant: Peter Riesenthel (Gilching, Germany) (represented by: E. Aliko Busse, 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: Dynamic Promotion Co. Ltd (Bangkok, Thailand)

Form of order sought

— Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 6 November 2009 and 10 December 2009 (Case R 621/2009-3);

— in the alternative, order restitutio in integrum in relation to the applicant;

— order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Community design No 2 179 550 001 for 'Hampers, crates and baskets'

Proprietor of the Community trade mark: Dynamic Promotion Co. Ltd

Applicant for the declaration of invalidity: Peter Riesentheil

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

Decision of the Board of Appeal: Rejection of the appeal as inadmissible

Pleas in law: Infringement of the right to be heard and incorrect exercise of discretion by the Board of Appeal

Action brought on 9 February 2010 — Geemarc Telecom v OHIM — Audioline (AMPLIDECT)

(Case T-59/10)

(2010/C 100/84)

Language in which the application was lodged: English

Parties

Applicant: Geemarc Telecom International Ltd (Wanchai, Hong Kong) (represented by: G. Farrington, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Audioline GmbH (Neuss, Germany)

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 20 November 2009 in case R 913/2009-2; and

— Order the defendant and the other party to the proceedings before the Board of Appeal to pay their own costs and those of the applicant.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'AMPLIDECT' for goods in classes 9 and 16

Proprietor of the Community trade mark: The applicant

Party requesting the declaration of invalidity of the Community trade mark: The other party to the proceedings before the Board of Appeal

Decision of the Cancellation Division: Rejected the request for a declaration of invalidity

Decision of the Board of Appeal: Granted the appeal and, as a result, cancelled the registered Community trade mark subject of the application for a declaration of invalidity

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation 207/2009, as the Board of Appeal: (i) failed to take into account that the other party to the proceedings before the Board of Appeal had failed to adduce evidence of lack of distinctive character of the registered Community trade mark subject of the application for a declaration of invalidity; and (ii) failed to take into account that the registered Community trade mark subject of the application for a declaration of invalidity has acquired an enhanced distinctiveness through the level of use made of it; the Board of Appeal failed to restrict itself to an examination of the evidence and arguments provided by the parties within the time line set by the Board of Appeal.

Action brought on 10 February 2010 — Jackson International v OHIM — Royal Shakespeare (ROYAL SHAKESPEARE)

(Case T-60/10)

(2010/C 100/85)

Language in which the application was lodged: English

Parties

Applicant: Jackson International Trading Company Kurt D. Brühl Gesellschaft m.b.H. & Co. KG (Graz, Austria) (represented by: S. Di Natale and H.G. Zeiner, lawyers)

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