

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

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 23 February 2010 in Case R 470/2009-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark representing a green and white cross, in respect of goods and services in Classes 3, 5, 8, 9, 10, 11, 16, 21, 25, 29, 30, 32, 35-42 and 44 — Application No 5 930 979.

Decision of the Examiner: Refusal of the application.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 7(1)(b) of Regulation (EC) No 207/2009 ⁽¹⁾, as the Board of Appeal's assessment in relation to establishing distinctiveness was incorrect in a number of respects.

⁽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 27 April 2010 — BVR v OHIM — Austria Leasing (Austria Leasing Gesellschaft m.b.H. Mitglied der Raiffeisen-Bankengruppen Österreich)

(Case T-197/10)

(2010/C 179/82)

Language in which the application was lodged: German

Parties

Applicant: Bundesverband der Deutschen Volksbanken und Raiffeisenbanken eV (BVR) (Berlin, Germany) (represented by: I. Rinke, 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: Austria Leasing GmbH (Frankfurt, Germany)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 February 2010 (Case R 248/2009-1);

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Austria Leasing GmbH.

Community trade mark concerned: Figurative mark containing the word elements 'Austria Leasing Gesellschaft m.b.H. Mitglied der Raiffeisen-Bankengruppen Österreich', in respect of services in Classes 35, 36 and 37.

Proprietor of the mark or sign cited in the opposition proceedings: BVR.

Mark or sign cited in opposition: inter alia, a figurative mark registered in Germany which contains the word element 'Raiffeisen', in respect of services in Classes 36, 39 and 42.

Decision of the Opposition Division: Rejection of the opposition.

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 a likelihood of confusion between the marks at issue.

⁽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 30 April 2010 — Maximuscle Limited v OHIM — Foreign Supplement Trade Mark Ltd (GAKIC)

(Case T-198/10)

(2010/C 179/83)

Language in which the application was lodged: English

Parties

Applicant: Maximuscle Ltd (Hertfordshire, United Kingdom) (represented by: N. Phillips, Solicitor and G. Fernando, Barrister)

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

Other party to the proceedings before the Board of Appeal: Foreign Supplement Trademark Ltd (Oakville, Canada)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 January 2010 in case R 1621/2008-1, and remit the matter alternatively altered;
- In the alternative, alter the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 January 2010 in case R 1621/2008-1;
- Order the defendant to bear the costs incurred in these proceedings as well as those incurred before OHIM.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark “GAKIC” for goods in classes 5, 30 and 32.

Proprietor of the Community trade mark cited in the invalidity proceedings: The other party to the proceedings before the Board of Appeal

Party requesting the declaration of invalidity of the Community trade mark: The applicant

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

Decision of the Board of Appeal: Dismissed the appeal and, as a result, rejected the request for a declaration of invalidity of the registered Community trade mark in question

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation No 207/2009, as the Board of Appeal: (i) repeated the error of the Cancellation Division and wrongly considered the case as if made under Article 7(1)(d), (ii) wrongly found significance in the fact that glycine-alpha-ketoisocaproic acid, of which GAKIC is an abbreviated form, is a patented compound in the United States, (iii) failed to consider material after the registration date, on the basis that it had no probative value, (iv) failed to consider evidence on the basis that

it related to a website connected with the applicant, (v) had an inconsistent approach, given the finding that GAKIC was an abbreviated form of glycine-alpha-ketoisocaproic acid, (vi) mischaracterised evidence and failed to give proper weight to evidence showing that ‘GAKIC’ was the natural abbreviation of glycine [(G)]-alpha [(A)]-ketoisocaproic [(KIC)] acid, and (vii) wrongly found trade mark significance in the capitalisation of the words ‘GAKIC’.

Action brought on 27 April 2010 — DRV v OHIM — Austria Leasing (Austria Leasing Gesellschaft m.b.H. Mitglied der Raiffeisen-Bankengruppe Österreich)

(Case T-199/10)

(2010/C 179/84)

Language in which the application was lodged: German

Parties

Applicant: Deutscher Raiffeisenverband eV (DRV) (Bonn, Germany) (represented by: I. Rinke, 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: Austria Leasing GmbH (Frankfurt, Germany)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 February 2010 (Case R 253/2009-1);
- Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Austria Leasing GmbH.

Community trade mark concerned: Figurative mark which contains the word elements ‘Austria Leasing Gesellschaft m.b.H. Mitglied der Raiffeisen-Bankengruppe Österreich’, in respect of services in Classes 35, 36 and 37.

Proprietor of the mark or sign cited in the opposition proceedings: DRV.