

By its second plea, the applicant considers that the contested decision violates its right of fair proceedings by infringing Article 64(1) of Council Regulation (EC) No 207/2009, as the Board of Appeal based its decision on a completely new argument without the Applicant having been invited to submit its observations.

Action brought on 30 June 2010 — CBp Carbon Industries v OHIM

(Case T-294/10)

(2010/C 260/23)

Language of the case: English

Parties

Applicant: CBp Carbon Industries, Inc. (New York, USA) (represented by: J. Fish, Solicitor and S. Malynicz, Barrister)

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

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 21 April 2010 in case R 1361/2009-1;

— Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'CARBON GREEN' for goods in class 17 — Community trade mark application No 973531

Decision of the examiner: Refused the application for a Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant advances two pleas in law in support of its application.

On the basis of its first plea, the applicant claims that the contested decision infringes Article 7(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal erred in its assessment of the distinctiveness of the concerned word mark in relation to the relevant goods.

By its second plea, the applicant considers that the contested decision infringes Article 7(1)(c) of Council Regulation (EC) No 207/2009, as the Board of Appeal (i) erred in relation to the meaning and syntax of the concerned word mark, as well as its aptness or otherwise as an immediate and direct descriptive term for the goods in question; (ii) on the one hand correctly concluded that the relevant public was specialised, yet, on the other failed to establish facts of its own motion that showed the mark was descriptive to such public; and (iii) failed to establish on the evidence that there was, in the relevant specialised sphere, a reasonable likelihood that other traders would wish to use the sign in future.

Action brought on 7 July 2010 — Arrieta D. Gross v OHIM — Toro Araneda (BIODANZA)

(Case T-298/10)

(2010/C 260/24)

Language in which the application was lodged: English

Parties

Applicant: Christina Arrieta D. Gross (Hamburg, Germany) (represented by: J.-P. Ewert, lawyer)

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

Other party to the proceedings before the Board of Appeal: Rolando Mario Toro Araneda (Santiago de Chile, Chile)

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 13 April 2010 in case R 1149/2009-2;

— Order the defendant to bear the costs of the proceedings; and

— Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal, should it become an intervening party in this case.

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark 'BIODANZA', for goods and services in classes 16, 41 and 44

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: German trade mark registration No 2905152 of the word mark 'BIODANZA', for goods and services in classes 16 and 41; Danish trade mark registration No VA 199500708 of the word mark 'BIODANZA', for goods and services in classes 16, 41 and 44

Decision of the Opposition Division: Upheld the opposition for part of the contested goods and services and allowed the application to proceed for the remaining goods of the application

Decision of the Board of Appeal: Upheld the appeal, annulled the contested decision and rejected the opposition entirely

Pleas in law: The applicant advances two pleas in law in support of its application.

On the basis of its first plea, the applicant claims that the contested decision infringes Articles 42(2) and 42(5) of Council Regulation (EC) No 207/2009, as the Board of Appeal wrongly found that the applicant did not prove that the earlier trade mark has been put to genuine use in a Member State in which the earlier national trade mark is protected for use in the Community.

By its second plea, the applicant considers that the contested decision infringes Rule 22(2) of Commission Regulation (EC) No 2868/95, as the Board of Appeal failed to invite the applicant to provide the proof required as it should have specified.

Action brought on 14 July 2010 — In 't Veld v Commission

(Case T-301/10)

(2010/C 260/25)

Language of the case: English

Parties

Applicants: Sophie in t Veld (Brussels, Belgium), (represented by: O. Brouwer and J. Blockx, lawyers)

Defendant: European Commission

Form of order sought

— Annul the Decision of the Commission of 4 May 2010, ref. SG.E.3/HP/psi-Ares (2010) 234950, to refuse full access to the applicant's confirmatory request for access to documents; and

— Order the defendant to pay the costs of the proceedings, including the costs of any intervening parties.

Pleas in law and main arguments

By means of the present application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of the Decision of the Commission of 4 May 2010 to refuse full access to documents concerning the negotiations of a new Anti-Counterfeiting Trade Agreement, requested by the applicant pursuant to Regulation (EC) No 1049/2001 ⁽¹⁾.

In support of his action, the applicant submits the following pleas in law:

Firstly, the Commission's Decision infringes Article 8(3) of Regulation No 1049/2001 as it impliedly refuses access to a number of documents requested by the applicant by failing to explain why access to these documents was refused.