

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7 of Council Regulation No 207/2009, as the Board of Appeal: (i) on the one hand correctly acknowledged that 'Castell' was a recognised indication of origin in relation to wine, yet, on the other erred in considering that the contested trade mark 'CASTEL' was conspicuously different from 'Castell' and hence concluded that the contested trade mark could be registered, (ii) by saying that 'CASTEL' was a word commonly used for 'castle' in the wine industry, failed to draw the conclusion that 'CASTEL' could not be registered; Infringement of Articles 63, 64, 75 and 76 of Council Regulation No 207/2009, as the Board of Appeal did not properly take into account the facts and arguments submitted; Infringement of Article 65 of Council Regulation No 207/2009, as the Board of Appeal acted ultra vires in justifying its decision by a 'peaceful coexistence', although this doctrine is not apparent for consideration for the registration of a trade mark.

**Action brought on 4 August 2010 — SA.PAR. v OHIM —
Salini Costruttori (GRUPPO SALINI)**

(Case T-321/10)

(2010/C 260/34)

Language in which the application was lodged: Italian

Parties

Applicant: SA.PAR. Srl (Rome, Italy) (represented by: A. Masetti Zannini de Concina, M. Bussoletti and G. Petrocchi, 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: Salini Costruttori SpA (Rome, Italy)

Form of order sought

- declare the present action admissible;
- annul the decision of the First Board of Appeal of OHIM of 21 April 2010 on the grounds of breach of Articles 52(1)(b) and 53(1)(a) of Regulation (EC) No 207/2009 and of a deficient statement of reasons;

- order OHIM to pay the costs of the present proceedings and of those before the Board of Appeal.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'GRUPPO SALINI' (registration application No 3 832 161) for services in Classes 36, 37 and 42.

Proprietor of the Community trade mark: The applicant.

Party requesting the declaration of invalidity of the Community trade mark: SALINI COSTRUTTORI SpA.

Trade mark right of the party requesting the declaration of invalidity: Well-known trade mark in Italy, de facto trade mark, domain name and company name of 'SALINI' for services in Classes 36, 37 and 42.

Decision of the Cancellation Division: Rejection of the application for a declaration of invalidity.

Decision of the Board of Appeal: Annulment of the decision of the Cancellation Division and declaration of nullity of the Community trade mark.

Pleas in law: Breach of Article 53(1)(a), in conjunction with Article 8(1)(b) and 8(2)(c), of Regulation No 207/2009 on the Community trade mark, breach of Article 52(1)(b) of that regulation, and deficient statement of reasons.

Action brought on 30 July 2010 — Clasado v Commission

(Case T-322/10)

(2010/C 260/35)

Language of the case: English

Parties

Applicant: Clasado Ltd. (Milton Keynes, United Kingdom) (represented by: G.C. Facenna, Barrister, M.E. Guinness and M.C. Hann, Solicitors)

Defendant: European Commission

Form of order sought

— Annul those parts of Commission Regulations (EU) No 382/2010 ⁽¹⁾ and No 384/2010 ⁽²⁾ of 5 May 2010 relating to health claims submitted by the applicant in respect of Bimuno^{BT} (BGOS) Prebiotic; and

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

Pleas in law and main arguments

By means of the present application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of those parts of Commission Regulations (EU) No 382/2010 and No 384/2010 of 5 May 2010, where it has been decided that health claims submitted by the applicant in respect of Bimuno^{BT} (BGOS) Prebiotic, a prebiotic food supplement designed to support the immune system and gastrointestinal health in humans, and reduce the risk of travellers' diarrhoea, do not comply with the requirements of Regulation (EC) No 1924/2006 ⁽³⁾, and thus should not be authorised.

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

Firstly, the Commission infringed an essential procedural requirement when it adopted the regulations in question, namely the procedure for comment by the applicant and public under Article 16(6) and 17 of Regulation (EC) No 1924/2006.

Secondly, in doing so the Commission also wrongly disregarded Article 38(1) of Regulation (EC) No 178/2002 ⁽⁴⁾, which is designed to ensure that the European Food Safety Agency carries out its activities with a high level of transparency.

In addition, by concluding that supplementary comments made by the European Food Safety Agency on the applicant's applications on 4 December 2009 did not constitute an opinion, or part of the opinion, referred to in Article 16 of Regulation (EC) No 1924/2006, the regulations in question were adopted on the basis of an error of law.

Furthermore, the Commission's regulations whose annulment is being sought were adopted in violation of Clasado's right to be heard under Article 41 of the Charter of Fundamental Rights of the European Union ⁽⁵⁾, and its legitimate expectations.

Finally, the Commission also infringed the right to sound administration, which is one of the general principles common to the constitutional traditions of the Member States, and in particular its obligation as the decision-maker under Article 17 of Regulation (EC) No 1924/2006 to apply diligent and independent scrutiny to all the relevant material before it.

⁽¹⁾ Commission Regulation (EU) No 382/2010 of 5 May 2010 refusing to authorise certain health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health (OJ 2010 L 113, p. 1).

⁽²⁾ Commission Regulation (EU) No 384/2010 of 5 May 2010 on the authorisation and refusal of authorisation of certain health claims made on foods and referring to the reduction of disease risk and to children's development and health (OJ 2010 L 113, p. 6).

⁽³⁾ Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9).

⁽⁴⁾ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1).

⁽⁵⁾ Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389).