

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 20 May 2010 in case R 1237/2008-1;
- Confirm the decision of the Cancellation Division of 15 July 2008 regarding Community trade mark application No 1372580;
- Confirm the validity of Community trade mark registration No 1372580;
- Order the defendant and the other parties to the proceedings before the Board of Appeal to pay the costs of the proceedings.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark representing a surface covered with black circles for goods in classes 8 and 21 — Community trade mark registration No 1372580

Proprietor of the Community trade mark: The applicant

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

Trade mark right of the parties requesting the declaration of invalidity: The parties requesting the declaration of invalidity grounded their request on absolute grounds for refusal pursuant to Article 7 of Council Regulation (EC) No 207/2009

Decision of the Cancellation Division: Rejected the application for declaration of invalidity of the Community trade mark

Decision of the Board of Appeal: Annulled the contested decision and declared the Community trade mark registration invalid

Pleas in law: Infringement of Article 7(1)(e)(ii) of Council Regulation (EC) No 207/2009, as the Board of Appeal erred in concluding that the provisions of this article are applicable to the contested Community trade mark.

Action brought on 17 September 2010 — Václav Hrbek trading as BODY-HF v OHMI — The Outdoor Group (ALPINE PRO SPORTSWEAR & EQUIPMENT)

(Case T-434/10)

(2010/C 328/57)

Language in which the application was lodged: English

Parties

Applicant: Václav Hrbek trading as BODY-HF (Prague, Czech Republic) (represented by: C. Jäger, lawyer)

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

Other party to the proceedings before the Board of Appeal: The Outdoor Group Ltd (Northampton, United Kingdom)

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 8 July 2010 in case R 1441/2009-2;
- Order the defendant to reject opposition No B1276692 and to allow the application No 5779351 for registration in its entirety;
- Order the defendant to bear the costs of the proceedings;
- 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 and the Opposition Division, should it become an intervening party in this case.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'ALPINE PRO SPORTSWEAR & EQUIPMENT', for goods in classes 18, 24, 25 and 28 — Community trade mark application No 5779351

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited: Community trade mark registration No 2165017 of the figurative mark 'alpine', for goods in classes 18 and 25

Decision of the Opposition Division: Upheld the opposition partially

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant considers that the contested decision infringes Articles 65(2) and 8(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal misused its power by the ruling of the contested decision as it lacks objectivity and legal basis, and erroneously applied the criteria to establish a likelihood of confusion between the earlier trademark and the contested trademark.

Action brought on 24 September 2010 — Fulmen v Council

(Case T-439/10)

(2010/C 328/58)

Language of the case: French

Parties

Applicant: Fulmen (Tehran, Iran) (represented by: A. Kronshagen, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul point 11 of Section I B of the annex to Council Regulation (EU) No 668/2010 concerning restrictive measures against Iran, and the Council's decision of 26 July 2010 in so far as it concerns the applicant;

— order the Council of the European Union to pay the costs.

Pleas in law and main arguments

The applicant seeks annulment of Council implementing Regulation (EU) No 668/2010 implementing Article 7(2) of Regulation (EC) No 423/2007,⁽¹⁾ and Council Decision 2010/413/CFSP,⁽²⁾ concerning restrictive measures against Iran with the aim of preventing nuclear proliferation, in so far as the applicant's name has been placed on the list of persons, entities and bodies whose funds and economic resources are frozen pursuant to that provision.

In support of its action the applicant submits that the contested Council decision should be annulled since there is no relevant

decision of a competent authority justifying, at the time of its adoption, the inclusion of the applicant on the list of organisations involved in Iran's nuclear or ballistic missiles activities.

The applicant also alleges an infringement of procedural guarantees in that its rights of defence and its right to a fair hearing have been infringed in so far as:

- the Council did not sufficiently reason its decision to include the applicant's name on the contested list;
- the factors held against the applicant were not communicated prior to the Council's decision; and
- the applicant was not provided with the opportunity to effectively express its point of view on those factors.

⁽¹⁾ Council implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2010 L 195, p. 25).

⁽²⁾ Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39).

Action brought on 24 September 2010 — Mahmoudian v Council

(Case T-440/10)

(2010/C 328/59)

Language of the case: French

Parties

Applicant: Fereydoun Mahmoudian (Tehran, Iran) (represented by: A. Kronshagen, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul point 2 of Section I A of the annex to Council Regulation (EU) No 668/2010 concerning restrictive measures against Iran, and the Council's decision of 26 July 2010 in so far as it concerns the applicant;

— order the Council of the European Union to pay the costs.