

Action brought on 8 November 2010 — Seikoh Giken v OHIM — Seiko (SG SEIKOH GIKEN)

(Case T-519/10)

(2011/C 13/61)

Language in which the application was lodged: English

Parties

Applicant: Kabushiki Kaisha Seikoh Giken (Matsudo-shi, Japan) (represented by: G. Marín Raigal, P. López Ronda and G. Macias Bonilla, lawyers)

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

Other party to the proceedings before the Board of Appeal: Seiko Kabushiki Kaisha (Chuo-ku, Japan)

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 12 August 2010 in case R 1553/2009-1;
- Reject in its entirety the opposition to registration of the mark applied for in respect of the goods in class 25;
- Order the defendant to grant registration of the mark applied for;
- Order the defendant to pay the costs of the current proceedings; and
- Order the other party to the proceedings before the Board of Appeal to pay the costs of the current proceedings, 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 'SG SEIKOH GIKEN', for goods in classes 3, 7 and 9 — Community trade mark application No 908461

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 2390953 of the word mark 'SEIKO', for goods and services in classes 1– 42

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant considers that the contested decision of the First Board of Appeal infringes the provisions of Council Regulation (EC) No 207/2009, hereinafter CTMR, by a misleading, incorrect interpretation and inappropriate enforcement of Article 8(1)(b) CTMR and the applicable case-law.

Action brought on 10 November 2010 — Comunidad Autónoma de Galicia v Commission

(Case T-520/10)

(2011/C 13/62)

Language of the case: Spanish

Parties

Applicant: Comunidad Autónoma de Galicia (Santiago de Compostela, Spain) (represented by: S. Martínez Lage and H. Brokelmann, lawyers)

Defendant: Commission

Form of order sought

- Annul Decision N 178/2010 of 29 September 2010 approving public-service compensation for Spanish electricity producers;
- order the Commission to pay the costs.

Pleas in law and main arguments

This action is brought against the same decision as that challenged in Case T-484/10 *Gas Natural Fenosa SDG v Commission*.

The applicant puts forward three pleas in support of its action:

- Infringement of procedural rights ensured by Article 108(2) TFEU and Article 6 of Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, ⁽¹⁾ since the Commission failed to initiate the formal investigation procedure, which it is obliged to do whenever there are serious doubts as to the compatibility of the aid under consideration with the common market.
- Infringement of Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry ⁽²⁾.

- Infringement of Article 106(2) TFEU, inasmuch as the conditions of necessity and proportionality required by that provision if the aid in the present case, which was granted by the Spanish authorities to compensate for the additional costs resulting from the provision of a public service, is to be approved are not met.
- Infringement of Article 34 TFEU, since the aid in the present case is a measure having equivalent effect, which cannot be justified under Article 36 TFEU by the need to secure the electricity supply.
- The aid in the present case constitutes an undue cumulation of aid granted to the coal industry in the period 2008-2010, contrary to the provision made in Article 8(1) of Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry,⁽²⁾ and seriously distorts competition in the electricity sector, disregarding Article 4(d) and (e) of Regulation No 1407/2002.
- Infringement of Articles 11 and 191 TFEU and of Article 3(3) TEU, since the contested decision fails, in the applicant's submission, to have to regard to the damaging effects which the decision will have so far as the environment is concerned.

Finally, the applicant alleges breach of the right to property safeguarded by Article 17 of the Charter of Fundamental Rights of the European Union.

⁽¹⁾ OJ 1999 L 83, p. 1.

⁽²⁾ OJ 2002 L 205, p. 1.

⁽³⁾ OJ 2002 L 205, p. 1.

Action brought on 8 November 2010 — Hell Energy v OHIM — Hansa Mineralbrunnen (HELL)

(Case T-522/10)

(2011/C 13/63)

Language in which the application was lodged: English

Parties

Applicant: Hell Energy Magyarország kft (Budapest, Hungary) (represented by: M. Treis, lawyer)

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

Other party to the proceedings before the Board of Appeal: Hansa Mineralbrunnen GmbH (Rellingen, 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 5 August 2010 in case R 1517/2009-1;

- Allow the registration of the Community trade mark application No 5937107; and
- Order the other party to the proceedings before the Board of Appeal to bear the costs of the current proceedings as well as those incurred by the applicant before the Board of Appeal and the Opposition Division.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'HELL', for goods in class 32 — Community trade mark application No 5937107

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 5135331 of the word mark 'Hella', for goods in class 32

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant considers that the contested decision infringes Article 8(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal and the Opposition Division erred in their decisions in finding a likelihood of confusion.

Action brought on 8 November 2010 — Interkobo v OHIM — XXXLutz Marken (mybaby)

(Case T-523/10)

(2011/C 13/64)

Language in which the application was lodged: Polish

Parties

Applicant: Interkobo Sp. z o.o. (Łódź, Poland) (represented by: R. Skubisz, 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: XXXLutz Marken GmbH (Wels, Austria)

Form of order sought

- declare invalid in its entirety the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 September 2010 in Case R 88/2009-4;