

Pleas in law and main arguments

Applicant for a Community trade mark: Garmo AG

Community trade mark concerned: the figurative mark 'GAZI Hellim' for goods in Class 29

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

Mark or sign cited in opposition: the collective word mark 'HALLOUMI' for goods in Class 29

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 the marks and goods at issue are similar and there is a likelihood of confusion between the marks

⁽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 23 November 2010 — Kessel v OHIM — Janssen-Cilag (Premeno)

(Case T-536/10)

(2011/C 30/83)

Language in which the application was lodged: German

Parties

Applicant: Kessel Marketing & Vertriebs GmbH (Mörfelden-Walldorf, Germany) (represented by: S. Bund, 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: Janssen-Cilag GmbH (Neuss, Germany)

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 21 September 2010 in Case R 708/2010-4;

— Order the defendant and the intervener, in accordance with Article 87(2) and (5) of the Rules of Procedure of the General Court, to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'Premeno' for goods in Class 5

Proprietor of the mark or sign cited in the opposition proceedings: Janssen-Cilag GmbH

Mark or sign cited in opposition: the German word mark 'Pramino' for goods in Class 5

Decision of the Opposition Division: opposition upheld

Decision of the Board of Appeal: appeal dismissed

Pleas in law: Infringement of Article 42(2) and (3) of Regulation (EC) No 207/2009 ⁽¹⁾, as there is insufficient proof of use of the opposing trade mark and infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 as there is no likelihood of confusion of the marks at issue.

The applicant also submits that the restriction of the list of goods and services is admissible.

⁽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 26 November 2010 — Adamowski v OHIM — Fagumit (FAGUMIT)

(Case T-537/10)

(2011/C 30/84)

Language in which the application was lodged: German

Parties

Applicant: Ursula Adamowski (Hamburg, Germany) (represented by: D. von Schultz, 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: Fabryka Węży Gumowych i Tworzyw Sztucznych Fagumit Sp. z o.o. (Wolbrom, Poland)

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 September 2010 in Case R 1002/2009-1;

— dismiss the application for a declaration of invalidity of Community trade mark No 3 005 980;

— order OHIM to pay the costs incurred in removing the mark from the register, in the proceedings before the Board of Appeal, and in the present proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Figurative mark containing the word element 'FAGUMIT' for goods in Classes 12 and 17.

Proprietor of the Community trade mark: Ursula Adamowski

Applicant for the declaration of invalidity: Fabryka Węży Gumowych i Tworzyw Sztucznych Fagumit Sp. z o.o.

Trade mark right of applicant for the declaration: National figurative mark containing the word element 'FAGUMIT' for goods in Class 17.

Decision of the Cancellation Division: Dismissal of the application for annulment.

Decision of the Board of Appeal: Appeal upheld and the mark was declared invalid.

Pleas in law: Infringement of Article 53(1)(c) of Regulation (EC) No 207/2009, ⁽¹⁾ in conjunction with Article 8(4) thereof, since the other party to the proceedings before the Board of Appeal failed to provide legally valid evidence that the company name 'FAGUMIT' is actually used; infringement of Article 53(1)(b) of Regulation (EC) No 207/2009, in conjunction with Article 8(3) thereof, since the other party to the proceedings before the Board of Appeal effectively agreed to the registration of the trade mark rights associated with the name 'FAGUMIT', and infringement of Article 52(1)(b) of Regulation (EC) No 207/2009, since the applicant cannot be accused of acting in bad faith at the time when she filed her application for the contested Community trade mark.

⁽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 26 November 2010 — Adamowski v OHIM — Fagumit (Fagumit)

(Case T-538/10)

(2011/C 30/85)

Language in which the application was lodged: German

Parties

Applicant: Ursula Adamowski (Hamburg, Germany) (represented by: D. von Schultz, 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: Fabryka Węży Gumowych i Tworzyw Sztucznych Fagumit Sp. z o.o. (Wolbrom, Poland)

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 September 2010 in Case R 1003/2009-1;

— dismiss the application for a declaration of invalidity of Community trade mark No 3 093 226;

— order OHIM to pay the costs incurred in removing the mark from the register, in the proceedings before the Board of Appeal, and in the present proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'Fagumit' for goods in Classes 12 and 17.

Proprietor of the Community trade mark: Ursula Adamowski

Applicant for the declaration of invalidity: Fabryka Węży Gumowych i Tworzyw Sztucznych Fagumit Sp. z o.o.

Trade mark right of applicant for the declaration: National figurative mark containing the word element 'FAGUMIT' for goods in Class 17.

Decision of the Cancellation Division: Dismissal of the application for annulment.

Decision of the Board of Appeal: Appeal upheld and the mark was declared invalid.

Pleas in law: Infringement of Article 53(1)(c) of Regulation (EC) No 207/2009, ⁽¹⁾ in conjunction with Article 8(4) thereof, since the other party to the proceedings before the Board of Appeal failed to provide legally valid evidence that the company name 'FAGUMIT' is actually used; infringement of Article 53(1)(b) of Regulation (EC) No 207/2009, in conjunction with Article 8(3) thereof, since the other party to the proceedings before the Board of Appeal effectively agreed to the registration of the trade mark rights associated with the name 'FAGUMIT', and infringement of Article 52(1)(b) of Regulation (EC) No 207/2009, since the applicant cannot be accused of acting in bad faith at the time when she filed her application for the contested Community trade mark.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).