

**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, <sup>(1)</sup> 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.

<sup>(1)</sup> 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.

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*Pleas in law:* Infringement of Article 53(1)(c) of Regulation (EC) No 207/2009, <sup>(1)</sup> 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.

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