

The applicants advance the following grounds in support of their pleas.

First, the applicants submit that the powers of the European Commission and the Council conferred by the Treaties were exceeded in the adoption of the contested decisions. More specifically, Articles 4 and 5 of the Treaties introduce the principles of subsidiarity and proportionality. In addition, under Article 5(2) of the Treaties it is expressly provided that any competence not conferred by the Member States on the European Union remains with the Member States. Pursuant to Article 126 et seq. of the Treaties, the measures which may be decided upon by the Council under the excessive deficit procedure and included in its decisions cannot be prescribed specifically, explicitly and without room for deviation, since that competence is not conferred upon the Council by the Treaties.

Second, the applicants maintain that the powers conferred by the Treaties on the European Commission and the Council were exceeded in the adoption of the contested decisions and that those decisions are, in their content, contrary to the Treaties. More specifically, the legal basis relied upon for the adoption of the contested decisions is Articles 126(9) and 136 of the Treaty. However, they were adopted in a manner that exceeded the powers of the European Commission and the Council conferred by those articles, simply as a measure implementing a bilateral agreement between the 15 Member States of the Euro zone, which decided to grant the bilateral loans, and Greece. Such a competence for adoption of a measure on the part of the Council is neither recognised nor prescribed by the Treaties.

Third, the applicants maintain that, in introducing pay and pension reductions, the contested decisions affect acquired property rights of the applicants and were accordingly adopted in breach of Article 1 of the First Protocol to the European Convention for the Protection of Human Rights.

Action brought on 22 November 2010 — XXXLutz Marken v OHIM — Meyer Manufacturing (CIRCON)

(Case T-542/10)

(2011/C 30/89)

Language in which the application was lodged: German

Parties

Applicant: XXXLutz Marken GmbH (Wels, Austria) (represented by: H. Pannen, 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: Meyer Manufacturing Co. Ltd (Hong Kong, China)

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 40/2010-1;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark 'CIRCON' for goods in Classes 7, 11 and 21.

Proprietor of the mark or sign cited in the opposition proceedings: Meyer Manufacturing Company Limited.

Mark or sign cited in opposition: Word mark 'CIRCULON' for goods in Classes 11 and 21.

Decision of the Opposition Division: Refusal in part of registration.

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⁾ since there is no likelihood of confusion between the marks at issue, and infringement of Article 76(2)(2) of Regulation (EC) No 207/2009, since the Board of Appeal took into account in its decision facts which were not put forward by the other party to the proceedings before the Board of Appeal.

⁽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 29 November 2010 — Nordmilch v OHIM — Lactimilk (MILRAM)

(Case T-546/10)

(2011/C 30/90)

Language in which the application was lodged: German

Parties

Applicant: Nordmilch AG (Bremen, Germany) (represented by: R. Schneider, 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: Lactimilk, SA (Madrid, Spain)

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 15 September 2010 in Joined Cases R 1041/2009-4 and R 1053/2009-4, in so far as it refuses Community trade mark application 002 851 384 for certain goods in Classes 5 and 29;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark 'MILRAM' for goods in Classes 5, 29, 30, 33, 33 and 43.

Proprietor of the mark or sign cited in the opposition proceedings: Lactimilk, SA.

Mark or sign cited in opposition: National figurative mark containing the word element 'RAM' for goods in Classes 29, and various national word marks 'RAM' for goods in Classes 5, 29, 30 and 32.

Decision of the Opposition Division: Rejection in part of the opposition.

Decision of the Board of Appeal: Annulment of the decision of the Opposition Division, in so far as the opposition in respect of certain goods was rejected and refusal of registration for the goods in question.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009,⁽¹⁾ since there is no likelihood of confusion between the marks at issue. The applicant also claims that the Board of Appeal did not take account, in respect of an opposing mark, that its protection had expired at the time of the decision of 15 September 2010.

⁽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 29 November 2010 — Omya v OHIM — Alpha Calcit (CALCIMATT)

(Case T-547/10)

(2011/C 30/91)

Language in which the application was lodged: German

Parties

Applicant: Omya AG (Oftringen, Switzerland) (represented by: F. Kuschmirek, 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: Alpha Calcit Füllstoffgesellschaft mbH (Cologne, 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) (OHIM) of 16 September 2010 in Case R 1370/2009-1, and order the defendant to register Community trade mark application No 5 200 654 'CALCIMATT' for all the goods in respect of which application was sought;

— order the defendant to pay the costs;

— in the alternative, stay the proceedings until a final decision has been taken on whether OHIM is to remove the opposing mark EU 003513488 'CALCILAN' from the register.

Pleas in law and main arguments

Applicant for a Community trade mark: Omya AG.

Community trade mark concerned: Word mark 'CALCIMATT' for goods in Classes 1 and 2.

Proprietor of the mark or sign cited in the opposition proceedings: Alpha Calcit Füllstoffgesellschaft mbH.

Mark or sign cited in opposition: Internationally registered word marks 'CALCIPLAST', 'CALCILIT' and 'CALCICELL' for goods in Classes 1 and 19, Community word marks 'Calcilit' and 'CALCILAN' for goods in Classes 1 and 19, and national word works 'CALCICELL' and 'CALCIPLAST' for goods in Class 1.

Decision of the Opposition Division: Opposition rejected.

Decision of the Board of Appeal: Annulment of the decision of the Opposition Division and refusal to register.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009,⁽¹⁾ since there is no likelihood of confusion between opposing marks as regards the goods in respect of which application was sought.

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