

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

Other party to the proceedings before the Board of Appeal: Afoi Anezoulaki AE trading as FIERATEX S.A. (Kilkis, Greece)

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 6 September 2010 in case R 217/2010-2;
- Annul the decision of the Opposition Division of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 December 2009;
- Reject the Community trade mark application No 6908214 granted by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) for ‘table covers’; and
- Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The word mark ‘natur’, for goods in class 24 — Community trade mark application No 6908214

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

Mark or sign cited in opposition: Community trade mark registration No 2016384 of the figurative mark ‘natura selection’, for goods and services in classes 3, 14, 16, 20, 25, 35, 38, 39 and 42; Community trade mark registration No 2704948 of the figurative mark ‘natura’ for goods and services in classes 14, 25 and 35; Community trade mark registration No 3694627 of the figurative mark ‘natura casa’ for goods and services in classes 20, 35 and 39; Community trade mark registration No 4713368 of the figurative mark ‘natura’ for goods and services in classes 14, 20, 25 and 35; International trade mark registration No 642074 of the figurative mark ‘natura selection’ for services in class 39; Spanish trade mark registration No 1811494 of the figurative mark ‘natura selection’ for services in class 39; Spanish national establishment sign No 251725 of the figurative mark ‘natura selection’ for the following activity ‘establishment dedicated to the marketing of gift articles’; Spanish national establishment sign No 252321 of the figurative mark ‘natura selection’ for the following activity ‘establishment dedicated to the marketing of gift articles’; Spanish national establishment sign No 208780 of the word mark ‘NATURA SELECTION, S.L.’ for the following activity ‘establishment dedicated to the marketing of gift products. Located in Barcelona’.

Decision of the Opposition Division: Upheld the opposition for part of the contested goods

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assumed that there was no likelihood of confusion between the trade marks due to a lacking similarity between the trade marks and between the goods.

Action brought on 16 December 2010 — HTTS Hanseatic Trade Trust & Shipping v Council

(Case T-562/10)

(2011/C 46/28)

Language of the case: German

Parties

Applicant: HTTS Hanseatic Trade Trust & Shipping GmbH (Hamburg, Germany) (represented by: J. Kienzle and M. Schlingmann, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- Annul Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 in so far as it concerns the applicant;
- order the Council to pay the costs of the proceedings, in particular those incurred by the applicant.

Pleas in law and main arguments

The applicant raises two pleas in law in support of its action.

1. First plea: infringement of the applicant’s rights of defence.
 - The applicant claims in this regard that the Council infringed its right to effective legal protection and in particular the requirement to state reasons, in that it did not provide sufficient reasons for including it in Annex VIII to the contested regulation.
 - Next, the applicant claims that the Council failed, even though asked expressly, to provide grounds or points of view and the relevant evidence to justify the applicant’s inclusion in Annex VIII to the contested regulation.
 - Finally, the applicant complains in the context of its first plea that the Council infringed its right to be heard, in so far as it failed to provide the applicant with the opportunity laid down in Article 36(3) and (4) of the contested regulation to present observations on its inclusion on the list of sanctioned persons, which would then have required the Council to review the issue.

2. Second plea: infringement of the applicant's fundamental right to respect for property.

- The applicant submits in this regard that its inclusion in Annex VIII to the contested regulation constitutes an unjustified interference with its fundamental right to property, since it is not apparent from the insufficient reasoning provided by the Council why it was included on the list of persons sanctioned under Article 16(2) of the contested regulation.
- Next, the applicant submits that its inclusion in Annex VIII to the contested regulation is based on an obvious erroneous assessment of its situation and of its activities on the part of the Council.
- Finally, the applicant submits in the context of its second plea that its inclusion in Annex VIII to the contested regulation is incompatible with the aims pursued by the regulation and that it constitutes a disproportionate interference with its property rights.

Action brought on 13 December 2010 — Bimbo v OHIM — Panrico (BIMBO DOUGHNUTS)

(Case T-569/10)

(2011/C 46/29)

Language in which the application was lodged: English

Parties

Applicant: Bimbo, SA (Barcelona, Spain) (represented by: J. Carbonell Callicó, lawyer)

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

Other party to the proceedings before the Board of Appeal: Panrico, SL (Barcelona, Spain)

Form of order sought

- Modify the decision of the Fourth Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 7 October 2010 in case R 838/2009-4 and grant the Community trade mark application No 5096847;
- In the alternative, annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 October 2010 in case R 838/2009-4; and
- Order the defendant and the other party to the proceedings to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'BIMBO DOUGHNUTS', for goods in class 30 — Community trade mark application No 5096847

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 in opposition: Spanish trade mark registration No 399563 of the word mark 'DONUT' for goods in class 30; Spanish trade mark registration No 643273 of the figurative mark 'donuts' for goods in class 30; Spanish trade mark registration No 1288926 of the word mark 'DOGHNUTS' for goods in class 30; Spanish trade mark registration No 2518530 of the figurative mark 'donuts' for goods in class 30; Portuguese trade mark registration No 316988 of the word mark 'DONUTS' for goods in class 30; International trade mark registration No 355753 of the word mark 'DONUT' for goods in class 30; International trade mark registration No 814272 of the figurative trade mark 'donuts' for goods in class 30

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 Articles 75 and 76 of Council Regulation (EC) No 207/2009, as the Board of Appeal disregarded facts and evidences that were submitted in due time by the parties, and that the contested decision infringes Article 8(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal erred in its assessment of likelihood of confusion.
