

Action brought on 25 January 2011 — Kastenholz v OHIM — qwatchme (watch dials)

(Case T-68/11)

(2011/C 113/30)

Language in which the application was lodged: German

Parties

Applicant: Erich Kastenholz (Troisdorf, Germany) (represented by: L. Acker, lawyer)

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

Other party to the proceedings before the Board of Appeal: qwatchme A/S (Vejle East, Denmark)

Form of order sought

— Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 2 November 2010 in Case R 1086/2009-3;

— refer the case back to the Cancellation Division for consideration of copyright protection relied on by the applicant, which was not adequately analysed by that Division;

— order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community design in respect of which a declaration of invalidity has been sought: Community design No 602636-0003, which shows a watch dial.

Proprietor of the Community design: qwatchme A/S.

Applicant for the declaration of invalidity of the Community trade mark: the applicant.

Grounds for the application for a declaration of invalidity: Breach of Article 25(1)(b), together with Article 4 and Article 25(1)(f) of Regulation (EC) No 6/2002,⁽¹⁾ for lack of novelty and infringement of Paul Heimbach's copyright in an artistic work.

Decision of the Cancellation Division: Rejection of the application for a declaration of invalidity.

Decision of the Board of Appeal: Rejection of the appeal.

Pleas in law: Breach of Article 25(1) and Article 5 and Article 6 of Regulation (EC) No 6/2002, as the Board of Appeal did not

make a clear distinction between the features of 'novelty' and 'individual character', as well as breach of Article 25(1)(f) of Regulation (EC) No 6/2002, as neither the Board of Appeal nor the Cancellation Division of OHIM had duly analysed whether the Community design constitutes a prohibited use of a work which is protected under German copyright legislation.

⁽¹⁾ Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1).

Action brought on 3 February 2011 — Sogepi Consulting y Publicidad v OHIM (ESPETEC)

(Case T-72/11)

(2011/C 113/31)

Language of the case: Spanish

Parties

Applicant: Sogepi Consulting y Publicidad, SL (Vic, Spain) (represented by J.P. de Oliveira Vaz Miranda Sousa, T. Barceló Rebaque and N. Esteve Manasanch, lawyers)

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

Form of order sought

The applicant requests the Court to:

— annul and revoke the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 November 2010, in Case R 312/2010-2;

— as a consequence allow registration of Community trade mark No 7.114.572 'ESPETEC'; and

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'ESPETEC', for goods in Class 29

Decision of the Examiner: Refusal of the mark applied for

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 207/2009⁽¹⁾, since the term 'ESPETEC' is not devoid of distinctive character when considered independently of the goods applied for and infringement of Article 7(3) of Regulation (EC) No 207/2009 given the distortion and incorrect assessment of the evidence of use on the market of the mark 'ESPETEC'.

⁽¹⁾ Council Regulation (EC) No 2007/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1)

Action brought on 14 February 2011 — Formica v OHIM — Silicalia (CompacTop)

(Case T-82/11)

(2011/C 113/32)

Language in which the application was lodged: Spanish

Parties

Applicant: Formica, SA (Galdakao, Spain) (represented by: A. Gómez López, 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: Silicalia, SL (Valencia, Spain)

Form of order sought

The applicant requests the Court to:

- declare as not being in accordance with Regulation EC No 207/2009 on the Community trade mark the decision of 9 December 2010 of the First Board of Appeal of OHIM, in Case R 1083/2010-1;
- allow registration of the complex Community trade mark No 6 524 243 CompacTop, in Class 20; and
- order the defendant and, if appropriate, the intervener, to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Formica

Community trade mark concerned: Figurative mark 'CompacTop' for goods in Class 20.

Proprietor of the mark or sign cited in the opposition proceedings: Silicalia, SL

Mark or sign cited in opposition: Community and national figurative marks containing the word elements 'COMPACquartz',

'COMPACMARMOL&QUARTZ' and 'COMPAC MARMOL&QUARTZ' for goods and services in Classes 19, 27, 35, 37 and 39.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009⁽¹⁾ since there is no similarity or likelihood of confusion between the marks at issue.

⁽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 11 February 2011 — Antrax ItM v OHIM — Heating Company (Radiators for heating)

(Case T-83/11)

(2011/C 113/33)

Language in which the application was lodged: Italian

Parties

Applicant: Antrax It Srl (Resana, Italy) (represented by: L. Gazzola, lawyer)

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

Other party to the proceedings before the Board of Appeal: Heating Company BVBA (The) (Dilsen, Belgium)

Form of order sought

The applicant claims that the Court should:

- annul the decision of the Third Board of Appeal of OHIM of 2 November 2010, in so far as it declared Community design No 000593959-0001 invalid;
- annul the decision of the Third Board of Appeal of OHIM of 2 November 2010 in so far as it ordered Antrax It Srl to pay the costs incurred by The Heating Company BVBA in the proceedings before OHIM;
- order OHIM and The Heating Company BVBA to pay Antrax It SRL the costs, dues and legal fees relating to the present proceedings, together with any additional sums required by law;
- order The Heating Company BVBA to pay Antrax It Srl the costs, dues and legal fees incurred by the latter in the proceedings before OHIM, together with any additional sums required by law.