Action brought on 18 February 2011 — Rovi Pharmaceuticals v OHIM — Laboratorios Farmaceuticos Rovi (ROVI Pharmaceuticals)

(Case T-97/11)

(2011/C 120/35)

Language in which the application was lodged: English

Parties

Applicant: Rovi Pharmaceuticals GmbH (Schlüchtern, Germany) (represented by: M. Berghofer, lawyer)

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

Other party to the proceedings before the Board of Appeal: Laboratorios Farmaceuticos Rovi, SA (Madrid, Spain)

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 7 December 2010 in case R 500/2010-2;

— Reject the opposition No B 1368580 in its entirety with costs;

— Order the defendant to register Community trade mark application No 6475107.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'ROVI Pharmaceuticals', for goods and services in classes 3, 5 and 44 — Community trade mark application No 6475107

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: Community trade mark registration No 24810 of the figurative mark 'ROVI', for goods in classes 3 and 5; Community trade mark registration No 4953915 of the figurative mark 'ROVICM Rovi Contract Manufacturing', for goods and services in classes 5, 42 and 44; Spanish trade mark registration No 2509464 of the word mark 'ROVIFARMA', for goods and services in classes 5, 39 and 44; Spanish trade mark registration No 1324942 of the word mark 'ROVI', for goods in class 3; Spanish trade mark registration No 283403 of the word mark 'ROVI', for goods in classes 1 and 5; Spanish trade mark registration No 137853 of the figurative mark 'ROVI', for goods in class 3

Decision of the Opposition Division: Upheld the opposition

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: (i) wrongly found that there was likelihood of confusion as it has incorrectly appreciated the individual factors relevant to the global assessment, and (ii) omitted to perform the global assessment of the concerned marks.

Appeal brought on 17 February 2011 by AG against the judgment of the Civil Service Tribunal delivered on 16 December 2010 in Case F-25/10 AG v Parliament

(Case T-98/11 P)

(2011/C 120/36)

Language of the case: French

Parties

Appellant: AG (Brussels, Belgium) (represented by S. Rodrigues, A. Blot and C. Bernard-Glanz, lawyers)

Other party to the proceedings: European Parliament

Form of order sought by the appellant

— Declare the present appeal admissible;

— Annul the order made by the Civil Service Tribunal on 16 December 2010 in Case F-25/10;

— Grant the forms of order sought as regards annulment and indemnity submitted by the appellant before the Civil Service Tribunal;

— Order the Parliament to pay the costs of both instances.

Pleas in law and main arguments

In support of the appeal, the appellant raises a single plea in law, alleging distortion of the evidence adduced before the Judge at first instance, breach of the principle of legal certainty and infringement of the right to an effective remedy, in that:

— there is no document in the file which enables the CST to take the view that the appellant lacked diligence in not having her post forwarded during her end-of-year holidays, during which period the post official came to her home to deliver to her the registered letter from the Parliament with its response to her claim;

— the CST did not make clear what was to be understood by 'extended' holidays;

— the CST took the view that the non-delivery notice which the appellant found in her letterbox on her return from holiday obviously related to the registered letter from the Parliament with its response to her claim.

Action brought on 23 February 2011 — Mizuno v OHIM — Golfino (G)

(Case T-101/11)

(2011/C 120/37)

Language in which the application was lodged: German

Parties

Applicant: Mizuno Corp. (Osaka, Japan) (represented by: T. Raab and H. Lauf, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Golfino AG (Glinde, 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) of 15 December 2010 in Case R 821/2010-1 in its entirety;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the figurative mark containing the letter 'G' together with other symbols, for goods in Class 25

Proprietor of the mark or sign cited in the opposition proceedings: Golfino AG

Mark or sign cited in opposition: the figurative mark containing the letter 'G' together with a plus sign, for goods and services in Classes 18, 25 and 35

Decision of the Opposition Division: the opposition was rejected

Decision of the Board of Appeal: the appeal was granted and the application was rejected

Pleas in law: Infringement of Article 8(1)(b) and indirectly of Article 7(1)(b) of Regulation (EC) No 207/2009 [1] as there is no 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 21 February 2011 — EMA v Commission

(Case T-116/11)

(2011/C 120/38)

Language of the case: Italian

Parties

Applicant: European Medical Association (EMA) (Brussels, Belgium) (represented by: A. Franchi, L. Picciano and N. di Castelnuovo, lawyers)

Defendant: European Commission

Form of order sought

— Declare that the action is admissible and well founded as to the substance;

Principally:

— find and declare that the EMA correctly complied with its contractual obligations under contracts 507760 DICOEMS and 507126 COCOON and is therefore entitled to reimbursement of expenditure incurred in the performance of those contracts as set out in FORMs C which were sent to the Commission, including FORM C relating to period IV under the COCOON contract;

— find and declare that the Commission's decision to terminate those contracts, contained in the letter of 5 November 2010, is unlawful;

— accordingly, declare that there is no basis for the Commission's claim for reimbursement of the sum of EUR 164 080,10 and, consequently, annul, withdraw — including by the issue of a corresponding credit note — the debit note of 13 December 2010 by which the Commission sought repayment of the above sum or, in any event, declare that that claim was unlawful;

— order the Commission to pay the remaining sums due to EMA claimed in FORMs C forwarded to the Commission, amounting to EUR 250 999,16;

In the alternative:

— establish the liability of the Commission on the ground of unjust enrichment and wrongful act;

— as a consequence, order the Commission to pay compensation for the financial loss and non-material damage suffered by the applicant, to be quantified in the course of the proceedings;