

GENERAL COURT

Judgment of the General Court of 15 March 2011 — Ifemy's v OHIM — Dada & Co Kids (Dada & Co. kids)

(Case T-50/09) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for Community figurative mark Dada & Co. kids — Earlier national word mark DADA — Relative ground for refusal — Absence of genuine use of the earlier mark — Article 43(2) and (3) of Regulation (EC) No 40/94 (now Article 42(2) and (3) of Regulation (EC) No 207/2009))

(2011/C 130/26)

Language of the case: English

Parties

Applicant: Ifemy's Holding GmbH (Munich, Germany) (represented by: H.-G. Augustinowski, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: A. Folliard-Monguiral, Agent)

Other party to the proceedings before the Board of Appeal of OHIM: Dada & Co. Kids Srl (Prato, Italy)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 27 November 2008 (Case R 911/2008-4), relating to opposition proceedings between Ifemy's Holding GmbH and Dada & Co. Kids Srl.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Ifemy's Holding GmbH to pay the costs.

⁽¹⁾ OJ C 90, 18.4.2009.

Action brought on 22 February 2011 — American Express Marketing & Development v OHIM (IP ZONE)

(Case T-102/11)

(2011/C 130/27)

Language of the case: English

Parties

Applicant: American Express Marketing & Development Corp. (New York, United States) (represented by: V. Spitz, A. Gaul, T. Golda and S. Kirschstein-Freund, lawyers)

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

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 1 December 2010 in case R 1125/2010-2;

— In the alternative, amend the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 December 2010 in case R 1125/2010-2, and rule that the appeal is justified;

— Order the defendant to pay the costs of the appeal proceedings and of the proceedings before the Court.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'IP ZONE' for services in class 42

Decision of the Examiner: Refused the application for a Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation No 207/2009, as the Board of Appeal found that the trade mark lacks the necessary distinctiveness and is descriptive with respect to the services in question.

Action brought on 16 February 2011 — Apollo Tyres v OHIM — Endurance Technologies (ENDURACE)

(Case T-109/11)

(2011/C 130/28)

Language in which the application was lodged: English

Parties

Applicant: Apollo Tyres AG (Baden, Switzerland) (represented by: S. Szilvasi, lawyer)

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

Other party to the proceedings before the Board of Appeal: Endurance Technologies Pvt Ltd (Aurangabad, India)

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 25 November 2010 in case R 625/2010-1;

— Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings.