

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: figurative trade mark “Pelikan” for services in Classes 35 and 39 (Community trade mark no 3 325 941).

Proprietor of the Community trade mark: Pelikan Vertriebsgesellschaft mbH & Co. KG

Applicant for the declaration of invalidity of the Community trade mark: The Applicant

Grounds for the application for a declaration of invalidity: The applicant was acting in bad faith when filing the application for the trade mark [Article 52(1)(b) of Regulation (EC) No 207/2009 ⁽¹⁾].

Decision of the Cancellation Division: Application for declaration of invalidity dismissed.

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 52(1)(b) of Regulation No 207/2009, inasmuch as OHIM incorrectly assessed the facts, evidence and law, and thereby came to the incorrect conclusion that the trade mark in question was not lodged in bad faith.

⁽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 March 2011 — TMS Trademark-Schutzrechtsverwertungsgesellschaft v OHIM

(Case T-152/11)

(2011/C 139/45)

Language in which the application was lodged: German

Parties

Applicant: TMS Trademark-Schutzrechtsverwertungsgesellschaft mbH (Düsseldorf, Germany) (represented by: B. Hein and M.-H. Hoffmann, lawyers)

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

Other party to the proceedings before the Board of Appeal: Comercial Jacinto Parera, SA (Barcelona, 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 16 December 2010 in Case R 449/2009-2;

— Order the defendant to pay the costs, including those incurred during the proceedings before the Board of Appeal.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: Figurative mark ‘MAD’ for goods in Class 25.

Proprietor of the Community trade mark: Comercial Jacinto Parera, SA.

Party applying for revocation of the Community trade mark: The applicant.

Decision of the Cancellation Division: Rejection in part of the claim.

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

Pleas in law: Infringement of Article 15 and Article 51 of Regulation (EC) No 207/2009 ⁽¹⁾ and of Rule 22 of Regulation (EC) No 2968/95, ⁽²⁾ in that the Board of Appeal should not have reached the conclusion on the basis of the documents submitted as proof of use that the figurative mark ‘MAD’ is in genuine use for ‘items of clothing’.

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

⁽²⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 14 March 2011 — Zenato Azienda Vitivinicola v OHIM — Camera di Commercio, Industria, Artigianato e Agricoltura di Verona (ZENATO RIPASSA)

(Case T-153/11)

(2011/C 139/46)

Language in which the application was lodged: Italian

Parties

Applicant: Zenato Azienda Vitivinicola Srl (Peschiera del Garda, Italy) (represented by: A. Rizzoli, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Camera di Commercio, Industria, Artigianato e Agricoltura di Verona (Verona, Italy)

Form of order sought

The applicant claims that the Court should:

- declare the present action, together with the related annexes, admissible;
- annul the decision of the Board of Appeal (points 1, 2 and 3 of the operative part) in so far as it upholds the appeal, upholds the opposition and rejects in its entirety the application for registration, and orders the applicant to pay the costs incurred by the opposing party in the opposition and appeal proceedings;
- 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 'ZENATO RIPASSA' (registration application No 5 848 015), for goods in Class 33 (alcoholic beverages)

Proprietor of the mark or sign cited in the opposition proceedings: La Camera di Commercio, Industria, Artigianato e Agricoltura di Verona

Mark or sign cited in opposition: Italian word mark 'RIPASSO' (No 682 213) for goods in Class 33 ('Wines, spirits and liqueurs')

Decision of the Opposition Division: Opposition rejected

Decision of the Board of Appeal: To uphold the opposition and to reject in its entirety the application for registration

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/09.

Action brought on 14 March 2011 — Zenato Azienda Vitivinicola v OHIM — Camera di Commercio, Industria, Artigianato e Agricoltura di Verona (Ripassa Zenato)

(Case T-154/11)

(2011/C 139/47)

Language in which the application was lodged: Italian

Parties

Applicant: Zenato Azienda Vitivinicola Srl (Peschiera del Garda, Italy) (represented by: A. Rizzoli, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Camera di Commercio, Industria, Artigianato e Agricoltura di Verona (Verona, Italy)

Form of order sought

The applicant claims that the Court should:

- declare the present action, together with the related annexes, admissible;
- annul the decision of the Board of Appeal (points 1, 2 and 3 of the operative part) in so far as it upholds the appeal, upholds the opposition and rejects in its entirety the application for registration, and orders the applicant to pay the costs incurred by the opposing party in the opposition and appeal proceedings;
- order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Figurative mark containing the word element 'RIPASSA ZENATO' (registration application No 5 877 865), for goods in Class 33

Proprietor of the mark or sign cited in the opposition proceedings: Camera di Commercio, Industria, Artigianato e Agricoltura di Verona

Mark or sign cited in opposition: Italian word mark "RIPASSO" (No 682 213), for goods in Class 33

Decision of the Opposition Division: Opposition rejected

Decision of the Board of Appeal: To uphold the opposition and to reject in its entirety the application for registration

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/09.

Action brought on 10 March 2011 — Magnesitas de Rubián SA v Parliament and Council

(Case T-158/11)

(2011/C 139/48)

Language of the case: Spanish

Parties

Applicants: Magnesitas de Rubián SA (Incio, Spain) Magnesitas Navarras SA (Zubiri, Spain), Ellinikoi Lefkolithoi Anonimos Metalleftiki Viomichaniki Naftiliaki kai Emporiki Etaireia (Athens, Greece) (represented by: H. Brokelmann, P. Martínez-Lage Sobredo, lawyers)

Defendant: Parliament and Council