Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Annulled the decision of the Opposition Division and rejected the opposition in its entirety

Pleas in law: Infringement of Articles 8(1)(b) and 8(5) of Council Regulation No 207/2009, as the Board of Appeal: (i) wrongly concluded that there is no likelihood of confusion between the contested sign and the applicant's trademarks and it did not take into adequate consideration the enhanced distinctiveness of the applicant's marks; (ii) failed to consider the detriment to the applicant's trademarks and the unfair advantage that the contested sign would gain if its registration were allowed; and (iii) failed to consider the specificity of the case, that in the nature of the collective trademark of the applicant's mark, with an institutional function that makes it one of the States hallmarks.

Action brought on 16 March 2011 — Reddig v OHMI — Morleys (Shape of knife handles)

(Case T-164/11)

(2011/C 152/45)

Language in which the application was lodged: English

Parties

Applicant: Reddig GmbH (Drebber, Germany) (represented by: C. Thomas, lawyer)

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

Other party to the proceedings before the Board of Appeal: Morleys Ltd (Preston, United Kingdom)

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 15 December 2010 in case R 1072/2009-2;

— Order the defendant to pay the costs incurred in the proceedings before the General Court and order the (potential) intervener to pay the costs of the administrative proceedings before the Board of Appeal; and

— Set a date for an oral hearing for the case that findings of the General Court are not possible without an oral hearing.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The three-dimensional mark 'dolphin', for goods in classes 6, 8 and 20 — Community trade mark registration No 2630101

Proprietor of the Community trade mark: The applicant

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

Grounds for the application for a declaration of invalidity: The party requesting the declaration of invalidity grounded its request on absolute grounds for invalidity pursuant to Article 52(1)(a) in conjunction with Article 7(1)(b), (c), (d) and (e)(ii) of Council Regulation (EC) No 207/2009, and on that the proprietor had acted in bad faith when failing the application pursuant to Article 52(1)(b) of Council Regulation (EC) No 207/2009.

Decision of the Cancellation Division: Accepted the request for a declaration of invalidity and declared the registration of the Community trade mark invalid in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(e)(ii) of Council Regulation No 207/2009, the Board of Appeal incorrectly interpreted this article and incorrectly interpreted the requirements of the Lego decision of the Court of the European Union (Judgement of the Court of 14 September 2010, Lego Juris v OHIM, C-48/09 P).

Action brought on 11 March 2011 — Stichting Regionaal Opleidingencentrum van Amsterdam v OHIM — Investimust (COLLEGE)

(Case T-165/11)

(2011/C 152/46)

Language in which the application was lodged: English

Parties

Applicant: Stichting Regionaal Opleidingencentrum van Amsterdam (Amsterdam, Netherlands) (represented by: R.M.R. van Leeuwen, lawyer)

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

Other party to the proceedings before the Board of Appeal: Investimust, S.A. (Geneva, Switzerland)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 January 2011 in case R 508/2010-4; and

— Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'COLLEGE', for services in classes 39 and 43 — Community trade mark registration No 2645489

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

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

Grounds for the application for a declaration of invalidity: The party requesting the declaration of invalidity grounded its request on absolute grounds for invalidity pursuant to Article 52(1)(a) in conjunction with Article 7 of Council Regulation (EC) No 207/2009

Decision of the Cancellation Division: Rejected the request for declaration of invalidity

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 52(1)(a) in conjunction with Article 7(1)(c) and in conjunction with Article 7(1)(b) of Council Regulation No 207/2009, as also the Board of Appeal wrongly did not consider the evidence presented in appeal.

Action brought on 14 March 2011 — Carbunión v Council

(Case T-176/11)

(2011/C 152/47)

Language of the case: English

Parties

Applicant: Federación Nacional de Empresarios de Minas de Carbón (Carbunión) (Madrid, Spain) (represented by: K. Desai, Solicitor, S. Cisnal de Ugarte and M. Peristeraki, lawyers)

Defendant: Council of the European Union

Form of order sought

— declare the action for annulment admissible;

— declare the action for annulment founded and accordingly annul Article 3(1) indents (a) (b) and (f); and Article 3(3) of the Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (2010/787/EU) ([1]); and

— condemn the Council to bear the costs incurred by the applicant in relation to these proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law.

1. First plea in law, alleging manifest errors in the appreciation of the relevant acts since the defendant based the contested decision on the following findings:

   — the contribution of coal in the EU energy supply is small;

   — the closure of the uncompetitive mines and elimination of the EU coal production will encourage renewable energy sources;

   — the coal production in the EU and in Spain in particular are by no means expected to become competitive by 2018.

2. Second plea in law, alleging lack of statement of reasons since the Council failed to:

   — address the abundant evidence and conclusions that were presented to it during the preparatory procedure by other institutions and stakeholders demonstrating the importance of the EU coal industry for the security of supply in the EU;

   — state reasons for (i) departing from the State aid framework and policy instituted with the 2002 Coal Regulation ([2]), which was based on security of supply concerns, and (ii) instead adopting the contested decision based solely on competitiveness' considerations.

3. Third plea in law, alleging breach of the principles of legal certainty and legitimate expectations since the contested decision:

   — constitutes an abrupt and unexpected change of the position of the EU towards the indigenous coal sector in the EU and in Spain in particular;

   — violates the principle of legitimate expectations as it does not provide for a transitional period to allow the applicant to adapt to this significant change of policy.

4. Fourth plea in law, alleging breach of the principle of proportionality as the contested decision imposes unjustified and excessive restrictions to the operation of the indigenous coal mines in Spain, which do not correspond to the Council's objectives. More precisely, in the applicant's view, the measures adopted by the contested decision do not address the environmental concerns put forward by the Council, since the EU electricity plants will continue to 'burn' imported coal. In fact the contested decision imposes overly burdensome obligations on the applicant which are totally unrelated to the objective of environmental protection. Furthermore, the applicant submits that competition concerns arising from the subsidisation of the indigenous coal are also exaggerated in the contested decision.