

Action brought on 4 May 2011 — L'Oréal v OHIM — United Global Media Group (MyBeauty)

(Case T-240/11)

(2011/C 204/48)

Language in which the application was lodged: English

Parties

Applicant: L'Oréal (Paris, France) (represented by: A. von Mühlendahl and S. Abel, lawyers)

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

Other party to the proceedings before the Board of Appeal: United Global Media Group, Inc. (El Segundo, U.S.A.)

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 3 February 2011 in case R 898/2010-1;
- Order the defendant to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal; or
- Alternatively order the other party to the proceedings before the Board of Appeal should it become an intervener before the General Court, to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'MyBeauty TV', for goods in classes 3, 35 and 41 — Community trade mark application No 6406755

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Grounds for the opposition: The other party to the proceedings based its opposition on Article 8(4) CTMR, by claiming to be the proprietor of a number of earlier unregistered marks which were similar to the applicant's mark.

Decision of the Opposition Division: Rejected the opposition. Regarding the costs, the Opposition Division noted that the opponent, as losing party, would normally have to bear the costs incurred by the applicant's representation, but as the latter did not appoint a representative within the meaning of Article 93 CTMR, it did not incur such costs.

Decision of the Board of Appeal: Dismissed the appeal and ordered the applicant to bear the costs of the opponent.

Pleas in law: The applicant claims that the contested decision must be annulled because it violates Article 85(1) of Council Regulation No 207/2009. According to that provision, the

losing party in an opposition provision must pay the costs incurred by the prevailing party essential to the proceedings. Article 85(1) of CTMR does not limit that obligation to the costs incurred by instructing a professional representative within the meaning of Article 93(1) of CTMR. Rule 94 of CTMR also does not contain a provision to the effect that only the costs of professional representation may be recovered. Rather, Rule 94 CTMR merely places a 'cap' on the costs recoverable in case a professional representative was acting on behalf of the prevailing party. To the extent that Rule 94 of CTMR is to be interpreted as precluding any recovery of costs in case like the present one, this rule would be in plain contradiction to Article 85(1) of CTMR and thus void or inapplicable.

Action brought on 10 May 2011 — Sanco v OHIM — Marsalman (Representation of a chicken)

(Case T-249/11)

(2011/C 204/49)

Language in which the application was lodged: Spanish

Parties

Applicant: Sanco SA (Barcelona, Spain) (represented by: A. Segura Roda, lawyer)

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

Other party to the proceedings before the Board of Appeal: Marsalman SL (Barcelona, Spain)

Form of order sought

The applicant claims that the General Court should:

- Hold that the action brought against the Decision of the Second Board of Appeal of OHIM dated 17 February 2011 in Case R 1073/2010-2 is brought in time and in the prescribed manner, and in due course annul that decision, refuse registration of the Community mark No 6.675.383 for all its Classes and order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Marsalman SL

Community trade mark concerned: Figurative mark without text containing the graphic representation of a chicken framed in a semicircle (application for registration No 6.675.383) for goods in Class 29 and services in Classes 35 and 39.

Proprietor of the mark or sign cited in the opposition proceedings: The applicant.

Mark or sign cited in opposition: Spanish mark without text containing the graphic representation of a chicken framed in an oval (No 2.727.182) for goods in Classes 29 and 31.

Decision of the Opposition Division: Partial upholding of the opposition.