

Pleas in law and main arguments

Applicant for a Community trade mark: VICINI SpA

Community trade mark concerned: Figurative mark containing the word element 'Giuseppe BY GIUSEPPE ZANOTTI' (application for registration No 992.653), for goods in Classes 18 and 25

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

Mark or sign cited in opposition: Earlier Community word mark 'ZANOTTI' (No 244.277), for goods in Class 25

Decision of the Opposition Division: Opposition upheld in part

Decision of the Board of Appeal: Opposition rejected in its entirety

Pleas in law: Misinterpretation and misapplication of Article 8(2)(b) of Regulation No 207/2009 on the Community trade mark.

Action brought on 30 June 2011 — Getty Images v OHIM (PHOTOS.COM)

(Case T-338/11)

(2011/C 252/87)

Language of the case: English

Parties

Applicant: Getty Images (US), Inc. (Seattle, United States) (represented by: P.G. Olson, lawyer)

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 6 April 2011 in case R 1831/2010-2; and

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

Pleas in law and main arguments

Community trade mark concerned: The word mark 'PHOTOS.COM' for goods and services in classes 9, 42 and 45 — Community trade mark application No 8549991

Decision of the Examiner: Partially 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) in conjunction with Article 7(3) of Council Regulation No 207/2009, as the Board of Appeal: (i) wrongly found that the mark applied for describes the goods/services for which registration was sought; (ii) erred by disregarding the fact that the applicant's domain name registration corresponds to the mark applied for and has an effect on the assessment of the mark's distinctive character; and (iii) wrongly assessed that the

documentation was insufficient to document that the mark had acquired distinctiveness and based its decision on misunderstanding and misconception of the evidence presented. Infringement of the principles of equal treatment and legitimate expectation, as the Board of Appeal wrongly rejected the importance of the fact that OHIM has accepted the applicant's trademark 'PHOTOS.COM' for similar goods and services in a prior application.

Action brought on 28 June 2011 — Spain v European Commission

(Case T-339/11)

(2011/C 252/88)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Muñoz Pérez, Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision 2011/244/EU final of 15 April 2011 excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), in so far as it is the subject of this action, and

— order the defendant to pay the costs.

Pleas in law and main arguments

By the contested decision, the Commission excludes from financing certain costs of environmental management of packaging (for the years 2006, 2007 and 2008), in the sum of EUR 37 252 551,10.

The applicant argues in that regard that, by its Decision 2010/152/EU, the Commission excluded from EAGGF financing EUR 33 339 525,05 in connection with assistance for operational programmes, for it took the view that Community assistance to cover the costs entailed by the environmental management of packaging in the years from 2003 to 2006 had not been granted in accordance with the provisions of European Union law. That decision was the subject of an action for annulment brought by the Kingdom of Spain, at present pending as Case T-230/10.

The arguments put forward in this action are the same as those set forth in Case T-230/10.
