

Action brought on 30 September 2011 — Volvo Trademark v OHIM — Hebei Aulion Heavy Industries (LOVOL)

(Case T-524/11)

(2011/C 355/45)

Language in which the application was lodged: English

Parties

Applicant: Volvo Trademark Holding AB (Göteborg, Sweden) (represented by: M. Treis, lawyer)

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

Other party to the proceedings before the Board of Appeal: Hebei Aulion Heavy Industries Co., Ltd (Xuanhua, China)

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 19 July 2011 in case R 1870/2010-1;
- Reject the Community trade mark application No 5029731; and
- Order the other party to the proceedings to bear the costs of the applicant in connection with the present proceedings, the appeal before the Board of Appeal and the proceedings before the Opposition division.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark 'LOVOL', for goods in classes 7 and 12 — Community trade mark application No 5029731

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

Mark or sign cited in opposition: Community trade mark registration No 2361087, of the word mark 'VOLVO', for goods and services in classes 1-9, 11-12, 14, 16-18, 20-22, 24-28 and 33-42; Community trade mark application No 4804522, of the figurative mark 'VOLVO', for goods and services in classes 1-4, 6, 7, 9, 11-12, 14, 16, 18, 25, 28, 35-39 and 41; UK trade mark registration No 747361, of the figurative mark 'VOLVO', for goods in class 12; UK trade mark registration No 747362, of the word mark 'VOLVO', for goods in class 12; UK trade mark registration No 1051579, of the word mark 'VOLVO', for goods in class 7; UK trade mark registration No 1408143, of the figurative mark 'VOLVO', for goods in class 7

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(5) of Council Regulation No 207/2009, as the Board of Appeal failed to take all relevant factors into account when comparing the marks, thereby mistakenly found that there was no similarity in the marks. Infringement of a rule of law related to the application of the Regulation, and in particular, the principles established by the Court of Justice of the European Union in cases C-361/04 P, Ruiz-Picasso e.a./OHMI of 12 January 2006, ECR I-643 and case C-252/07, Intel Corporation, ECR I-8823, by applying them in a rigidly formalistic manner, and consequently, by not examining the merits of the opposition under Article 8(5) of Council Regulation No 207/2009.

Action brought on 29 September 2011 — Volvo Trademark v OHMI — Hebei Aulion Heavy Industries (LOVOL)

(Case T-525/11)

(2011/C 355/46)

Language in which the application was lodged: English

Parties

Applicant: Volvo Trademark Holding AB (Göteborg, Sweden) (represented by: M. Treis, lawyer)

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

Other party to the proceedings before the Board of Appeal: Hebei Aulion Heavy Industries Co., Ltd (Xuanhua, China)

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 23 June 2011 in case R 1868/2010-1;
- Reject the Community trade mark application No 5029814; and
- Order the other party to the proceedings to bear the costs of the applicant in connection with the present proceedings, the appeal before the Board of Appeal and the proceedings before the Opposition division.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark 'LOVOL', for goods in classes 7 and 12 — Community trade mark application No 5029814

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

Mark or sign cited in opposition: Community trade mark registration No 2361087, of the word mark 'VOLVO', for goods and services in classes 1-9, 11-12, 14, 16-18, 20-22, 24-28 and 33-42; Community trade mark application No 4804522, of the figurative mark 'VOLVO', for goods and services in classes 1-4, 6, 7, 9, 11-12, 14, 16, 18, 25, 28, 35-39 and 41; UK trade mark registration No 747361, of the figurative mark 'VOLVO', for goods in class 12; UK trade mark registration No 747362, of the word mark 'VOLVO', for goods in class 12; UK trade mark registration No 1051579, of the word mark 'VOLVO', for goods in class 7; UK trade mark registration No 1408143, of the figurative mark 'VOLVO', for goods in class 7

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(5) of Council Regulation No 207/2009, as the Board of Appeal failed to take all relevant factors into account when comparing the marks, thereby mistakenly found that there was no similarity in the marks. Infringement of a rule of law related to the application of the Regulation, and in particular, the principles established by the Court of Justice of the European Union in cases C-361/04 P, Ruiz-Picasso e.a./OHMI of 12 January 2006, ECR I-643 and case C-252/07, Intel Corporation, ECR I-8823, by applying them in a rigidly formalistic manner, and consequently, by not examining the merits of the opposition under Article 8(5) of Council Regulation No 207/2009.

Action brought on 10 October 2011 — Schenker v Commission

(Case T-534/11)

(2011/C 355/47)

Language of the case: German

Parties

Applicant: Schenker AG (Essen, Germany) (represented by: C. Von Hammerstein, B. Beckmann and C. Munding, lawyers)

Defendant: European Commission

Form of order sought

— Annul the contested decision of the defendant of 3 August 2011 (SG.B/MKu/psi-Ares[2001]);

— Order the defendant to bear the costs.

Pleas in law and main arguments

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

1. First plea: lack of specific and case-by-case examination of the documents

First, the Commission has not carried out a specific and case-by-case examination of the documents named in the application for access. According to the applicant, the Commission should not have been allowed to rely on a general presumption of the grounds for refusal of access. By doing so it disregarded the principles developed in the case-law concerning access to documents and the importance of the fundamental right of access to documents laid down in Article 42 of the Charter of Fundamental Rights.

2. Second plea: manifest errors in the application of the exceptions laid down in Regulation (EC) No 1049/2001 ⁽¹⁾

Second, the Commission made manifest errors when applying the exceptions laid down in Regulation No 1049/2001. By applying the exceptions too broadly, the Commission disregarded the principles developed in the case-law concerning access to documents and the importance of the fundamental right of access to documents laid down in Article 42 of the Charter of Fundamental Rights.

In the light of fundamental rights and of the principle of transparency and the rule of law, the applicant should be granted a right of access to the documents which is as extensive as possible.

3. Third plea in law: infringement of the principle of proportionality

Third, the Commission infringed the principle of proportionality by not weighing the exceptions — approved by it in error — or at least not weighing them objectively, against the public interest in the disclosure of the documents requested. The Commission therefore disregarded the fact that the public interest in the disclosure of the documents clearly outweighed keeping them secret.

4. Fourth plea in law: infringement of Article 42 of the Charter of Fundamental Rights

Fourth, the Commission disregarded the fact that the applicant in any case enjoys a right — guaranteed under Article 42 of the Charter of Fundamental Rights — to at least partial access to the documents applied for. The Commission deprives the fundamental right of access to documents and Regulation No 1049/2011 of practical effect by refusing all access whatsoever.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.