

Action brought on 6 September 2012 — Vitaminaqua Ltd v OHIM

(Case T -410/12)

(2012/C 355/71)

Language in which the application was lodged: Hungarian

Parties

Applicant: Vitaminaqua Ltd (London, United Kingdom) (represented by: A. Krajnyák, lawyer)

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

Other party to the proceedings before the Board of Appeal: Energy Brands, Inc. (New York, United States of America)

Form of order sought

— Amend the decision of the First Board of Appeal of OHIM rejecting application No 8338592 for registration of the figurative mark ‘vitaminaqua’ (Case R 997/2011-1) and order the registration of the trade mark in accordance with the decision of the Opposition Division of OHIM, thereby conferring protection as a trade mark on the sign;

— Order the defendant or the other party to bear the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Vitaminaqua Ltd.

Community trade mark concerned: the figurative mark ‘vitaminaqua’ for goods in Classes 5, 30 and 32 (application for registration No 8 338 592).

Proprietor of the mark or sign cited in the opposition proceedings: Energy Brands, Inc.

Mark or sign cited in opposition: inter alia the national word mark ‘VITAMINWATER’ for goods in Classes 5, 30 and 32.

Decision of the Opposition Division: opposition rejected.

Decision of the Board of Appeal: decision of the Opposition Division set aside and application for registration as a Community trade mark rejected.

Pleas in law: infringement of Article 8(1)(b) of Regulation No 207/2009, ⁽¹⁾ since there is no likelihood of confusion between the marks at issue.

⁽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 14 September 2012 — Xeda International and Others v Commission

(Case T-415/12)

(2012/C 355/72)

Language of the case: English

Parties

Applicants: Xeda International SA (Saint-Andiol, France); Pace International LLC (Washington, United States); and Decco Iberica Post Cosecha, SAU (Paterna, Spain) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: European Commission

Form of order sought

— Declare the application admissible and well-founded;

— Annul Commission Implementing Regulation (EU) No 578/2012 ⁽¹⁾; and

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

Pleas in law and main arguments

In support of the action, the applicants rely on three pleas in law.

1. First plea in law, alleging that the contested act is unlawful for manifest errors of appraisal. The Commission has erred as a matter of law in justifying the contested act on the grounds of hypothetical concerns: (i) the three unidentified metabolites and (ii) processed commodities. In relation to these concerns, the Commission also erred in law by asking the applicants for *probatio diabolica*, namely by asking for the identity of the unidentified metabolites in stored apples whereas this was technically impossible, and by asking the applicants to demonstrate an absence of risk in relation to low risk compounds found below the Limit of Quantification (LOQ) in processed commodities.