

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009 and of Article 8(5) of that regulation.

**Action brought on 27 November 2012 —
mobile.international v OHIM — Kommission (PL
mobile.eu)**

(Case T-519/12)

(2013/C 26/132)

Language in which the application was lodged: German

Parties

Applicant: mobile.international GmbH (Kleinmachnow, Germany) (represented by: T. Lührig, lawyer)

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

Other party to the proceedings before the Board of Appeal: European Commission

Form of order sought

The applicant claims that the Court should,

— annul the Decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 September 2012 in Case R 1401/2011-1 in respect of the following goods and services;

Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; calculating machines, data processing equipment and computers, computer peripheral devices and computer programs (included in class 9); all aforementioned goods only in relation to an online marketplace for the purchase and sale of vehicles, trailers and vehicle accessories.

Class 16: Paper, cardboard and goods made from these materials (included in Class 16); printed matter; photographs; stationery; typewriters and office machines (except furniture); instructional and teaching material (included in Class 16); plastic material for packaging, namely covers, bags, boxes and foils; all aforementioned goods only in relation to an online marketplace for the purchase and sale of vehicles, trailers and vehicle accessories.

Class 35: Advertising; business administration; business management services; office functions; all aforementioned goods only in relation to an online marketplace for the purchase and sale of vehicles, trailers and vehicle accessories.

Class 36: Insurance; arranging of insurance; financial affairs; credit brokerage; monetary affairs; financial management; all aforementioned goods only in relation to an online marketplace for the purchase and sale of vehicles, trailers and vehicle accessories.

Class 38: Telecommunications and in particular services on the Internet; collating, providing and transmission of messages, information, images and texts; electronic advertising; all aforementioned goods only in relation to an online marketplace for the purchase and sale of vehicles, trailers and vehicle accessories.

Class 42: Scientific and technological services and research and design relating thereto; design and development of computer hardware and software; rental of computer software; provision of search engines for the Internet; all aforementioned goods only in relation to an online marketplace for the purchase and sale of vehicles, trailers and vehicle accessories.

— in the alternative, annul the Decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 September 2012 in Case R 1401/2011-1 in respect of services in Classes 35, 38 and 42 to the extent referred to above;

— 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: Figurative mark containing the word element 'PL mobile.eu' in respect of goods and services in Classes 9, 16, 35, 36, 38 and 42 — Community trade mark No 8 307 779

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity of the Community trade mark: The European Commission

Grounds for the application for a declaration of invalidity: The Community trade mark constitutes a heraldic imitation of the mullets of the European Union

Decision of the Cancellation Division: Rejection of the application for a declaration of invalidity

Decision of the Board of Appeal: Decision of the Cancellation Division annulled and the Community trade mark declared invalid

Pleas in law:

— Infringement of Article 7(1)(h) of Regulation No 207/2009 in conjunction with Article 6 of the Paris Convention

— Infringement of Article 7(1)(g) of Regulation No 207/2009

— Infringement of the principle of the protection of legitimate expectations

Action brought on 6 December 2012 — DeMaCo Holland v Commission

(Case T-527/12)

(2013/C 26/133)

Language of the case: Dutch

Parties

Applicant: DeMaCo Holland BV (Langedijk, Netherlands) (represented by: L. Linders and S. Bishop, lawyers)

Defendant: European Commission

Form of order sought

— Declare the applicant's claim admissible and well-founded;

— consequently order Euratom to desist immediately from any use of the 'redesign' in respect of which the applicant has rights and, further, order Euratom to pay compensation to the applicant, provisionally estimated at EUR 100 000, on the basis of its non-contractual error;

— order Euratom to pay the costs incurred in the present proceedings.

Pleas in law and main arguments

By its claim the applicant seeks compensation for the damage suffered as a result of the non-contractual error of the European Atomic Energy Community, represented by the European Commission, inasmuch as it made use of technical drawings belonging to the applicant and transmitted those drawings for use in a public procurement procedure by the European Joint Undertaking for ITER and the Development of Fusion Energy (Fusion for Energy).

In support of its action the applicant claims that the defendant unlawfully made use of the applicant's technical drawings.

The technical drawings created exclusively by the applicant — outside any contractual relationship between the parties — were used by the defendant without the applicant's agreement. Furthermore, the defendant facilitated the use of the technical drawings by third parties, namely Fusion for Energy.

The knowingly unlawful use by the defendant of the applicant's technical drawings constitutes unlawful conduct and infringes the applicant's copyright.

The defendant has thus acquired an unauthorised economic advantage for itself on the basis of the applicant's financial and intellectual efforts, which is contrary to fair commercial practice and fair competition.

The damage suffered consists of the applicant's loss of profit as a result of Fusion for Energy's call for tenders, which was made possible as a result of the defendant's intervention, and remuneration for the disregard of the applicant's intellectual property rights.

Order of the General Court (First Chamber) of 3 December 2012 — JSK International Architekten und Ingenieure v ECB

(Case T-468/09) ⁽¹⁾

(2013/C 26/134)

Language of the case: German

The President of the First Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 24, 30.1.2010.
