

Action brought on 18 December 2012 — Grau Ferrer v OHIM — Rubio Ferrer (Bugui va)

(Case T-543/12)

(2013/C 55/31)

Language in which the application was lodged: Spanish

Parties

Applicant: Xavier Grau Ferrer (Caldes de Montbui, Spain) (represented by: J. Carbonell Callicó, lawyer)

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

Other parties to the proceedings before the Board of Appeal: Juan Cándido Rubio Ferrer (Xeraco, Spain), Alberto Rubio Ferrer (Xeraco)

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the Fourth Board of Appeal of 11 October 2012 in Cases R 274/2011-4 and R 520/2011-4, in accordance with Article 8(1)(a) and (b) and Article 76 of Regulation No 207/2009, and consequently refuse registration of figurative Community trade mark No 7 338 031 'Bugui va' in full, for all the goods and services applied for (Classes 31, 35 and 39);

— order OHIM to pay the costs, in accordance with Article 87(2) CTMR.

Pleas in law and main arguments

Applicant for a Community trade mark: Juan Cándido Rubio Ferrer and Alberto Rubio Ferrer

Community trade mark concerned: Figurative mark with the word element 'Bugui va' for goods and services in Classes 31, 35 and 39 — application for Community trade mark No 7 338 031

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

Mark or sign cited in opposition: National figurative mark with the word element 'Bugui' and figurative Community trade mark with the word element 'BUGUI De la huerta a casa FRUITS FROM THE SPANISH VEGETABLE GARDEN', for goods and services in classes 31, 32 and 39

Decision of the Opposition Division: Opposition upheld in part

Decision of the Board of Appeal: Decision of the Opposition Division annulled and opposition rejected in full

Pleas in law: Infringement of Article 8(1)(a) and (b) and of Articles 75 and 76 of Regulation No 207/2009, and infringement of Article 48 of Regulation No 2868/95

Action brought on 14 December 2012 — Pensa Pharma v OHIM — Ferring and Farmaceutisk Lab Ferring (PENSA PHARMA)

(Case T-544/12)

(2013/C 55/32)

Language in which the application was lodged: English

Parties

Applicant: Pensa Pharma, SA (Valencia, Spain) (represented by: M. Esteve Sanz and M. González Gordon, lawyers)

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

Other parties to the proceedings before the Board of Appeal: Ferring BV (Hoofddorp, Netherlands) and Farmaceutisk Lab Ferring A/S (Vanlose, Denmark)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 October 2012 in case R 1883/2011-5; and

— Order the defendant and if the case might be, the interveners, to pay the costs of the proceedings and the costs of the appeal incurred within the OHIM.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'PENSA PHARMA', for goods and services in classes 3, 5 and 44 — Community trade mark registration No 4954831

Proprietor of the Community trade mark: The applicant

Applicants for the declaration of invalidity of the Community trade mark: The other parties to the proceedings before the Board of Appeal

Grounds for the application for a declaration of invalidity: The requests for a declaration of invalidity were based on the grounds laid down in Article 53(1)(a) in conjunction with Article 8(1)(b) and 8(5) and Article 53(2) of Council Regulation No 207/2009, and on the Benelux trade mark registration No 377513 of the word mark 'PENTASA', for goods in class 5

Decision of the Cancellation Division: Accepted the request for a declaration of invalidity against the CTM for all the contested goods and services

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law:

— Infringement of Article 53(3) of Council Regulation No 207/2009; and

— Infringement of Article 8(1)(b) of Council Regulation No 207/2009

Action brought on 17 December 2012 — Pensa Pharma v OHIM — Ferring and Farmaceutisk Lab Ferring (pensa)

(Case T-546/12)

(2013/C 55/33)

Language in which the application was lodged: English

Parties

Applicant: Pensa Pharma, SA (Valencia, Spain) (represented by: M. Esteve Sanz and M. González Gordon, lawyers)

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

Other parties to the proceedings before the Board of Appeal: Ferring BV (Hoofddorp, Netherlands) and Farmaceutisk Lab Ferring A/S (Vanlose, Denmark)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 October 2012 in case R 1884/2011-5; and

— Order the defendant and if the case might be, the interveners, to pay the costs of the proceedings and the costs of the appeal incurred within the OHIM.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark 'pensa', for goods and services in classes 3, 5 and 44 — Community trade mark registration No 4963542

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity of the Community trade mark: The other parties to the proceedings before the Board of Appeal

Grounds for the application for a declaration of invalidity: The requests for a declaration of invalidity were based on the grounds laid down in Article 53(1)(a) in conjunction with Article 8(1)(b) and 8(5) and Article 53(2) of Council Regulation No 207/2009, and on the Benelux trade mark registration No 377513 of the word mark 'PENTASA', for goods in class 5

Decision of the Cancellation Division: Accepted the request for a declaration of invalidity against the CTM for all the contested goods and services

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law:

— Infringement of Article 53(3) of Council Regulation No 207/2009; and

— Infringement of Article 8(1)(b) of Council Regulation No 207/2009.

Action brought on 21 December 2012 — bachmeier v OHIM (oto-soft)

(Case T-550/12)

(2013/C 55/34)

Language of the case: German

Parties

Applicant: bachmeier GmbH & Co. KG (Ramsau b. Berchtesgaden, Germany) (represented by D. Donath, lawyer)

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