

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 53(1) in conjunction with 8(4) of Council Regulation No 207/2009.

Action brought on 21 March 2013 — Benelli Q.J./OHIM — Demharter (MOTO B)

(Case T-169/13)

(2013/C 147/48)

Language in which the application was lodged: English

Parties

Applicant: Benelli Q.J. Srl (Pesaro, Italy) (represented by: P. Lukácsi, lawyer)

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

Other party to the proceedings before the Board of Appeal: Demharter GmbH (Dillingen, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the defendant's decision and remit the case to OHIM for further examination and a new decision due to the fact that the prior marks of the applicant shall be considered earlier trade marks within the meaning of Article 8(1)(b) Council Regulation No 207/2009 and therefore the applicant's opposition based on likelihood of confusion shall be assessed as to its substance;

— Order the defendant to pay the applicant's costs.

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 'MOTO B' claiming the colours black, white, red, gold, green, brown and grey for goods in classes 9, 12 and 25 — Community trade mark application No 8 780 926

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

Mark or sign cited in opposition: Well-known, Italian, non-registered figurative marks «MOTOBI» et al.

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009.

Action brought on 21 March 2013 — Benelli Q.J./OHIM — Demharter (MOTOBI)

(Case T-170/13)

(2013/C 147/49)

Language in which the application was lodged: English

Parties

Applicant: Benelli Q.J. Srl (Pesaro, Italy) (represented by: P. Lukácsi, lawyer)

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

Other party to the proceedings before the Board of Appeal: Demharter GmbH (Dillingen, Germany)

Form of order sought

The applicant claims that the Court should:

— Alter the defendant's decision and order the dismissal of the application for revocation filed by the cancellation applicant;

— Annul the defendant's decision and remit the case to OHIM for further examination and a new decision should the Court consider that it is inevitable to conduct another thorough analysis of the evidence of genuine use;

— Order the defendant to pay the applicant's costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: The word mark 'MOTOBI' for goods in class 12 — Community trade mark registration No 835 264

Proprietor of the Community trade mark: The applicant

Party applying for revocation of the Community trade mark: The other party to the proceedings before the Board of Appeal

Decision of the Cancellation Division: Revoked the Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 51(1)(a) of Council Regulation No 207/2009.