

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: The word mark 'SMART WATER', Community trade mark registration No 781 153

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.

Action brought on 6 May 2013 — Orthogen v OHIM — Arthrex Medizinische Instrumente (IRAP)

(Case T-253/13)

(2013/C 207/67)

Language in which the application was lodged: German

Parties

Applicant: Orthogen AG (Düsseldorf, Germany) (represented by: M. Finger and S. Krüger, lawyers)

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

Other party to the proceedings before the Board of Appeal: Arthrex Medizinische Instrumente GmbH (Karlsfeld, Germany)

Form of order sought

The applicant claims that the General 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 21 February 2013 in Case R 382/2012-1;
- order OHIM to pay the costs of the proceedings, including those incurred before the Board of Appeal.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'IRAP' for goods and services in Classes 1, 5, 10, 42 and 44 — Community trade mark No 3 609 121

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity of the Community trade mark: Arthrex Medizinische Instrumente GmbH

Grounds for the application for a declaration of invalidity: Absolute ground for invalidity; 'IRAP' is a commonly used abbreviation for a certain protein which plays a significant role in certain medical and veterinary treatments.

Decision of the Cancellation Division: Application for a declaration of invalidity granted

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 52(1)(a) of Regulation No 207/2009 and of Article 7(1)(b) of Regulation No 207/2009.

Action brought on 6 May 2013 — Stayer Ibérica/OHIM — Korporaciya 'Masternet' (STAYER)

(Case T-254/13)

(2013/C 207/68)

Language in which the application was lodged: English

Parties

Applicant: Stayer Ibérica, SA (Pinto, Spain) (represented by: S. Rizzo, lawyer)

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

Other party to the proceedings before the Board of Appeal: ZAO Korporaciya 'Masternet' (Moscow, Russia)

Form of order sought

The applicant claims that the Court should:

- Annul the contested decision in so far as it upholds the appeal in part and declares the CTM registration No 4675881 invalid for the following goods:
 - Class 7: *Equipment and tools; parts of cutting and polishing diamond machines; bits and cutting wheels for the following industries; marble, granite, stone, clay, slabs, tiles and brick, and, in general terms, cutting tools as parts of equipment included in Class 7.*
 - Class 8: *Hand held abrasive items (wheels and grinding wheels).*
- Order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark 'STAYER' — Community trade mark registration No 4 675 881

Proprietor of the Community trade mark: The applicant

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

Grounds for the application for a declaration of invalidity: The grounds for the request for a declaration of invalidity were those of Article 53(1)(a) in conjunction with Article 8(1)(b) of Council Regulation No 207/2009

Decision of the Cancellation Division: Rejected the request for invalidity in its entirety

Decision of the Board of Appeal: Partially upheld the appeal.

Pleas in law: Infringement of Articles 76(2), 15 and 8(1)(b) of Council Regulation No 207/2009.

Action brought on 8 May 2013 — Republic of Poland v Commission

(Case T-257/13)

(2013/C 207/69)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, Agent)

Defendant: European Commission

Form of order sought

— annul Commission Implementing Decision 2013/123/EU of 26 February 2013 (notified under document C(2013) 981) on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2013 L 67, p. 20) in so far as it excludes from financing the amounts of EUR 28 763 238,60 and EUR 5 688 440,96 incurred by the paying agency accredited by the Republic of Poland;

— order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of the first subparagraph of Article 7(4) of Regulation (EC) No 1258/1999⁽¹⁾ and of Article 31(1) of Regulation (EC) No 1290/2005⁽²⁾ by reason of the application of a financial correction which was based on a mistaken determination of the facts and on an incorrect legal interpretation

— The Commission applied a financial correction which was based on a mistaken determination of the facts and on an incorrect legal interpretation, even though the expenditure was effected by the Polish authorities in accordance with European Union provisions. The Republic of Poland takes issue with the Commission's legal interpretation and findings of fact with regard to the alleged deficiencies in the management system for the action sector 'Early retirement' concerning, firstly, the obligation to carry out a commercial activity during the period prior to cessation of operation for purposes of early retirement, secondly, the inadequacy of the evidence of professional aptitude accepted, in the form of a declaration, by the Polish authorities, and, third, the lack of sanctions in the event of non-compliance, by farmers resuming operation of a holding, with the obligation to carry on an agricultural activity for five years.

2. Second plea in law, alleging breach of the fourth subparagraph of Article 7(4) of Regulation (EC) No 1258/1999 and of Article 31(2) of Regulation (EC) No 1290/2005, and also infringement of the principle of proportionality, by reason of the application of a flat-rate correction which was flagrantly excessive in relation to the risk of potential loss to the European Union budget

— None of the alleged deficiencies caused, or was capable of causing, financial losses for the European Union, and in any event the risk of such losses was entirely marginal.

3. Third plea in law, alleging breach of the second paragraph of Article 296 TFEU by virtue of the inadequate reasoning of the contested decision

— The Commission failed to produce any evidence or findings of fact or of law in support of its conclusions following the visit to three agricultural holdings.

4. Fourth plea in law, alleging infringement of the principle of subsidiarity

— The Commission flagrantly infringed the principle of subsidiarity, which is inscribed in the policy of support for rural development. The Commission interpreted the programming documents relating to support for rural development and, essentially, drew up requirements relating to the implementation of the programme, thereby interfering with the decision-making freedom of the Member States relating to the means by which to attain the objectives referred to in the programming documents.

⁽¹⁾ Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).

⁽²⁾ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).