



Reports of Cases

Case T-545/14

GEA Group AG

v

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

(Community trade mark — Application for community word mark engineering for a better world — Merely confirmatory decision — Final nature of the decision confirmed — Raised of the Court's own motion — Inadmissibility)

Summary — Order of the General Court (Second Chamber), 6 October 2015

1. *Actions for annulment — Action against a decision refusing to withdraw or amend an earlier act — Inadmissibility — Final character of the earlier decision — Action against the earlier decision declared out of time subsequently to the bringing of the action against the confirmatory decision — Irrelevant*

(Art. 263 TFEU)

2. *Actions for annulment — Action against a decision refusing to withdraw or amend an earlier act — Inadmissibility — Concept of confirmatory decision — Reexamination of an earlier decision in reply to a claim of new and substantial facts — Not included*

(Art. 263 TFEU)

3. *Community trade mark — Appeals procedure — Appeal to a Board of Appeal — Application for registration of a trade mark seeking reexamination of an earlier decision which has become final — Lawfulness — Condition — Application based on new and substantial facts — Concept of substantial fact — OHIM's previous decision-making practice — Not included*

(Art. 263 TFEU; Council Regulation No 207/2009)

4. *Actions for annulment — Action against a decision refusing to withdraw or amend an earlier act — Inadmissibility — Concept of confirmatory decision — Reexamination for the purposes of verifying the justification for maintaining an earlier decision following the modification of a legal or factual situation arising in the meantime — Not included*

(Art. 263 TFEU)

1. A decision which merely confirms an earlier decision that has become final is not an actionable measure. In order not to allow the time-limit for bringing an action against the confirmed decision to recommence, an action against such a confirmatory decision must be declared inadmissible.

The fact that the action against the earlier decision was declared to be out of time only after the bringing of the action against the confirmatory decision is not a ground for holding that the earlier decision had not become final at the date on which that action was brought. If bringing an action

against a decision out of time had the effect of postponing its acquisition of final status, the aim pursued by the case-law relating to the admissibility of actions brought against confirmatory measures, that is, to prevent the bringing of actions which would have the effect of causing expired limitation periods to begin to run again, would be deprived of its effect.

(see paras 15, 33)

2. See the text of the decision.

(see paras 16, 17)

3. The existence of substantial new facts may justify the submission of a request for reconsideration of a previous decision which has become final. Conversely, where the request for reconsideration is not based on substantial new facts, an action against a decision refusing to carry out the reconsideration must be declared inadmissible.

In that regard, the Board of Appeal is not required to re-examine the application for registration in the light of the decision-making practice of the Office for Harmonisation in the Internal Market (Trade Marks and Designs). Even if earlier registrations could be classified as new facts, because, although they were already in existence when that decision was adopted, they were not taken into consideration, they cannot be characterised as substantial facts. A fact is substantial if it is capable of substantially altering the legal situation as considered by the authors of the earlier measure, particularly by substantially altering the conditions which governed the earlier measure. That is true of a factor which raises doubts as to the merits of the solution adopted by the said measure.

The assessment as to whether a ground for refusing registration exists cannot be called into question on the sole basis that the Board of Appeal did not follow OHIM's decision-making practice in a particular case. The examination of an application for registration must be undertaken in each individual case, as the registration of a sign as a mark depends on specific criteria, which are applicable in the factual circumstances of the particular case, the purpose of those criteria being to ascertain whether the sign at issue is caught by a ground for refusal set out in Regulation No 207/2009 on the Community trade mark.

(see paras 17, 21-24)

4. See the text of the decision.

(see paras 26, 27)