



Reports of Cases

Judgment of the General Court (First Chamber) of 8 November 2016 — For Tune v EUIPO — Gastwerk Hotel Hamburg (fortune)

(Case T-579/15)

(EU trade mark — Opposition proceedings — Application for the EU figurative mark fortune — Earlier German word mark FORTUNE-HOTELS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

1. *EU trade mark — Definition and acquisition of the EU trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Criteria for assessment*

(Council Regulation No 207/2009, Art. 8(1)(b))

(see paras 15, 16, 60, 65)

2. *EU trade mark — Definition and acquisition of the EU trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Assessment of the likelihood of confusion — Attention level of the public*

(Council Regulation No 207/2009, Art. 8(1)(b))

(see paras 17, 21)

3. *EU trade mark — Definition and acquisition of the EU trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Figurative mark fortune — Word mark FORTUNE-HOTELS*

(Council Regulation No 207/2009, Art. 8(1)(b))

(see paras 20, 25, 64-68)

4. *EU trade mark — Definition and acquisition of the EU trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Similarity of the marks concerned — Criteria for assessment — Composite mark*

(Council Regulation No 207/2009, Art. 8(1)(b))

(see paras 26-28, 30, 35, 36)

5. *EU trade mark — Definition and acquisition of the EU trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Similarity of the marks concerned — Assessment of the distinctiveness of an element composing a trade mark*

(Council Regulation No 207/2009, Art. 8(1)(b))

(see para. 34)

Re:

ACTION brought against the decision of the Fifth Board of Appeal of EUIPO of 7 August 2015 (Case R 2808/2014-5), relating to opposition proceedings between Gastwerk Hotel Hamburg and For Tune.

Operative part

The Court:

1. Dismisses the action;
2. Orders For Tune sp. z o.o. to pay the costs.