



Reports of Cases

Order of the General Court (Third Chamber) of 17 October 2016 —

Orthema Service v EUIPO (Gehen wie auf Wolken)(Case T-620/15)

(EU trade mark)

(Application for EU word mark *Gehen wie auf Wolken* — Mark consisting of an advertising slogan — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Action manifestly lacking any foundation in law)

1. *EU trade mark — Definition and acquisition of the EU trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character — Concept — Criteria for assessment (Council Regulation No 207/2009, Art. 7(1)(b)) (see paras 15, 16)*
2. *EU trade mark — Definition and acquisition of the EU trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character — Marks constituted of advertising slogans — Distinctive character — Application of specific criteria for assessment — Not permissible (Council Regulation No 207/2009, Art. 7(1)(b)) (see paras 17-19)*
3. *EU trade mark — Definition and acquisition of the EU trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character — Marks constituted of advertising slogans — Slogan with a fantasy character (Council Regulation No 207/2009, Art. 7(1)(b)) (see para. 20)*
4. *EU trade mark — Definition and acquisition of the EU trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character — Marks constituted of advertising slogans — Flattering promotional formula (Council Regulation No 207/2009, Art. 7(1)(b)) (see paras 21, 22)*
5. *EU trade mark — Definition and acquisition of the EU trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character — Word mark *Gehen wie auf Wolken* (Council Regulation No 207/2009, Art. 7(1)(b)) (see paras 24, 29, 32)*
6. *EU trade mark — Definition and acquisition of the EU trade mark — Absolute grounds for refusal — Overlap between the scope of the grounds for refusal set out in subparagraphs (b) and (c) of Article 7(1) of Regulation No 207/2009 (Council Regulation No 207/2009, Art. 7(1)(b) and (c)) (see para. 28)*

7. *EU trade mark — Decisions of the Office — Principle of equal treatment — Principle of sound administration — EUIPO's previous decision-making practice — Principle of legality — Need for a strict and complete examination in each particular case (Council Regulation No 207/2009) (see para. 35)*

Re:

ACTION brought against the decision of the Fourth Board of Appeal of EUIPO of 1 September 2015 (Case R 404/2015-4), concerning an application for registration of the word sign *Gehen wie auf Wolken* as an EU trade mark.

Operative part

1. The action is dismissed.
2. Orthema Service GmbH is ordered to pay the costs.