



Reports of Cases

Case T-316/16

Moravia Consulting spol. s r. o.
v
European Union Intellectual Property Office

(EU trade mark — Opposition proceedings — Application for EU word mark SDC-554S — Earlier non-registered national word mark SDC-554S — Relative ground for refusal — Article 8(4) of Regulation (EC) No 207/2009 (now Article 8(4) of Regulation (EU) 2017/1001) — Evidence establishing the content of national law — Rule 19(2)(d) of Regulation (EC) No 2868/95 (now Article 7(2)(d) of Delegated Regulation (EU) 2017/1430) — Production of evidence for the first time before the Board of Appeal — Discretion of the Board of Appeal — Article 76(2) of Regulation No 207/2009 (now Article 95(2) of Regulation 2017/1001))

Summary – Judgment of the General Court (Ninth Chamber), 12 October 2017

1. *Judicial proceedings — Application initiating proceedings — Formal requirements — Brief summary of the pleas in law on which the application is based — No arguments in support of the claim — Inadmissibility*

(Rules of Procedure of the General Court, Art. 76(d))

2. *EU trade mark — Definition and acquisition of the EU trade mark — Relative grounds for refusal — Opposition by the proprietor of an unregistered trade mark or other sign used in the course of trade — Conditions — Interpretation in the light of EU law — Assessment by reference to the criteria determined by the national law governing the sign relied on*

(Council Regulation No 207/2009, Arts 8(4) and 76(1))

3. *EU trade mark — Definition and acquisition of the EU trade mark — Relative grounds for refusal — Opposition by the proprietor of an unregistered trade mark or other sign used in the course of trade — Sign giving its holder the right to prohibit the use of a more recent trade mark — Burden of proof*

(Council Regulation No 207/2009, Art. 8(4))

4. *EU trade mark — Appeals procedure — Appeal against a decision of the Opposition Division of EUIPO — Examination by the Board of Appeal — Scope — Facts and evidence not produced in support of the opposition within the period prescribed for that purpose — Evidence establishing the content of the national law — Account taken — Discretion of the Board of Appeal*

(Council Regulation No 207/2009, Arts 8(4) and 76(2); Commission Regulation No 2868/95, Art. 1, Rules 19(2)(d) and 50(1), third para.)

5. *Judicial proceedings – Production of evidence – Time-limit – Evidence lodged out of time – Conditions*

(Rules of Procedure of the General Court, Art. 85(1) and (3))

6. *Court of Justice – Judgments – Interpretation of the rules of law – Application to legal relationships arising and established before delivery of the decision*

1. See the text of the decision.

(see paras 29, 30)

2. See the text of the decision.

(see paras 38-40)

3. See the text of the decision.

(see para. 41)

4. Rule 19(2)(d) of Regulation No 2868/95 implementing Council Regulation No 40/94 on the Community trade mark (now Article 7(2)(d) of Delegated Regulation No 2017/1430 supplementing Regulation No 207/2009 and repealing Regulations No 2868/95 and No 216/96) places on the opponent the burden of providing European Union Intellectual Property Office not only with particulars showing that it satisfies the necessary conditions, in accordance with the national law that it is seeking to have applied, in order to be able to have the registration of an EU trade mark prohibited by reason of an earlier right, but also with particulars establishing the content of that law.

Moreover, the third subparagraph of Rule 50(1) of Regulation No 2868/95, provides that where the action is directed against a decision of an Opposition Division, the Board of Appeal must limit its examination of the action to facts and evidence presented within the time limits set or specified by the Opposition Division, unless the Board considers that ‘additional’ or ‘supplementary’ facts and evidence must be taken into account pursuant to Article 76(2) of Regulation No 207/2009 on the European Union trade mark (now Article 95(2) of Regulation No 2017/1001 on the European Union trade mark). However, Rule 50 of Regulation No 2868/95 cannot be interpreted as meaning that it extends the discretion of the Boards of Appeal to new evidence.

In that regard, if, in the context of the opposition proceedings, the applicant has produced no evidence as to the content of the national law at issue within the time limit and that the applicant has also failed to submit a legitimate reason justifying its conduct, and where the only piece of evidence presented by the applicant for the purpose of proving the existence, validity and scope of protection of the earlier non-registered trade mark provides no information on the use of the earlier mark relied on, and also contains no information on the requisite conditions under national law, the references to the provisions of national law provided by the applicant for the first time before the Board of Appeal are not ‘additional’ or ‘supplementary’ evidence to that which had been submitted before the Opposition Division. Consequently, the Board of Appeal did not have discretion to accept evidence produced for the first time before it, since such evidence was out of time.

(see paras 42, 49, 51-55, 60, 61)

5. See the text of the decision.

(see para. 63)

6. See the text of the decision.

(see para. 64)