

Action brought on 9 September 2005 — MacLean-Fogg/OHIM

(Case T-339/05)

(2005/C 296/60)

*Language of the case: English***Parties**

Applicant(s): MacLean-Fogg Company (Mundelein, USA) [represented by: H. Eichmann, G. Barth, U. Blumenröder, C. Niklas-Falter, M. Kinkeldey, K. Brandt, A. Franke, U. Stephani, B. Allekotte, E. Bertram, K. Lochner, B. Ertle, C. Neuhierl, S. Prückner, C. Schmitt, B. Mehnert, P. Lübbe, S. Brötje, lawyers]

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

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonization in the Internal Market (Trade-marks and Designs) in the case R 1122/2004-1 of June 20, 2005;
- order the costs of the proceedings to be borne by the defendant.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'LOKTHREAD' for goods in class 6 (bolts, bolts of metal, nuts, nuts of metal) — application No 3 440 666

Decision of the examiner: Refusal of the application for all goods

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation No 40/94 as the trade mark has to be considered as a whole and not as composed of two English words and thus possesses a minimum degree of distinctiveness.

Action brought on 13 September 2005 — Adler Modemärkte/OHIM

(Case T-340/05)

(2005/C 296/61)

*Language in which the application was lodged: English***Parties**

Applicant(s): Adler Modemärkte GmbH (Haibach, Germany) [represented by: R. Kaase, lawyer]

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

Other party/parties to the proceedings before the Board of Appeal: BVM S.p.A. (Bologna, Italy)

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the OHIM of 23 May 2005 in Case R 434/2003-4 on the grounds that it does not comply with Art 8 (1)(b) of Regulation No 40/94;
- Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'Eagle' for goods in classes 3, 18 and 25 — application No 1 595 909

Proprietor of the mark or sign cited in the opposition proceedings: BVM S.p.A.

Mark or sign cited: The national and international figurative mark and word mark 'Blue Eagle' for goods in classes 3, 18 and 25

Decision of the Opposition Division: Opposition upheld for all the contested goods

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as there is no likelihood of confusion between the conflicting trade marks. The overall impression of the two trade marks is substantially different and the component 'eagle' is not the dominating element of the opposition trade mark.

Action brought on 14 September 2005 — Henkel v OHIM

(Case T -342/05)

(2005/C 296/62)

*Language in which the application was lodged: German***Parties**

Applicant(s): Henkel KGaA (Düsseldorf, Germany) (represented by: C. Osterrieth, lawyer)

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

Other party or parties to the proceedings before the Board of Appeal of OHIM: Serra Y Roca S.A. (Barcelona, Spain)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 14 July 2005 in the appeal proceedings R 0556/2003-1 regarding the application for Community trade mark No 1 284 470, served on 19 July 2005;
- Order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: SERRA Y ROCA, S.A.

Community trade mark concerned: The word mark 'COR' for goods in Class 3 — application No 1 284 470

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: The national mark 'Dor' for goods in Classes 3, 5 and 21

Decision of the Opposition Division: Rejection of the opposition in respect of the goods 'scouring and abrasive preparations; soaps' in Class 3

Decision of the Board of Appeal: Dismissal of the applicant's appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 because of likelihood of confusion of the marks in question due to visual and aural similarity. In addition the applicant's mark has above average distinctive character due to intensive use.

— declare that the said Decision, even if valid, would in any event be void as to waiver of privilege, since it speaks only of immunity; and

— order the defendant to pay the costs of the applicant.

Pleas in law and main arguments

The applicant is a Member of the European Parliament. Criminal proceedings were instituted against him following which the Parliament was requested to confirm that the applicant's prosecution might proceed in accordance with the 1965 Protocol on privileges and immunities of the European Communities and, in any event, waive any privilege or immunity so that the prosecution could proceed. By the contested Decision the Parliament decided to waive the applicant's immunity.

The applicant seeks the annulment of this Decision. He submits that the Decision was wrong in law in that it considers that Article 8 of the 1965 Protocol does not grant protection against judicial prosecution. He argues that the Parliament's reasoning is inconsistent, waiving something that it holds not to exist.

The applicant further contends that the Parliament did not carry out a fair and complete consideration of the facts and arguments of both sides. In this context the applicant also invokes a violation of Rule 7(7) of the Parliament's Rules of Procedure, to the extent that the Committee expressed an opinion on the merits of the prosecution whilst forbidden from doing so.

The applicant finally invokes the absence of full and adequate reasons for the contested Decision and submits that it was not reasonable or proportionate.

Action brought on 5 September 2005 — V/Parliament

(Case T-345/05)

(2005/C 296/63)

Language of the case: English

Parties

Applicant(s): V. (Binsted, United Kingdom) [represented by: J. Lofthouse, barrister, M. Monan, C. Hayes, solicitors]

Defendant(s): European Parliament

Form of order sought

- declare void and annul the Decision of the European Parliament dated 5 July 2005 to waive the applicant's immunity;

Action brought on 12 September 2005 — Procter & Gamble/OHIM

(Case T-346/05)

(2005/C 296/64)

Language of the case: English

Parties

Applicant(s): The Procter & Gamble Company (Cincinnati, USA) [represented by: G. Kuipers, lawyer]

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