

Decision of the Opposition Division: Opposition upheld in relation to the contested goods in class 24

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The conflicting trade marks have no similarities from a visual, phonetic and conceptual point of view for Spanish, French or English speaking consumers. The fact that the earlier trade mark and the trade mark applied for cover the same products does therefore not create a risk of confusion in the mind of the public.

Appeal brought on 7 September 2006 by Carlos Sanchez Ferriz against the judgment of the Civil Service Tribunal delivered on 28 June 2006 in Case F-19/05 Sanchez Ferriz v Commission

(Case T-247/06 P)

(2006/C 261/51)

Language of the case: French

Parties

Appellant: Carlos Sanchez Ferriz (Brussels, Belgium) (represented by F. Frabetti, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

- set aside the judgment of the Civil Service Tribunal of 28 June 2006 in Case F-19/05;
- give a ruling on costs, fees and disbursements and order the Commission to pay them.

Pleas in law and main arguments

In his appeal, the appellant claims that the Tribunal committed procedural irregularities when it considered the plea alleging infringement of the principle of non-discrimination in that it failed to examine the substance of the case of alleged discrimination in the application of the rule establishing a weighting of the points in a career development report, as raised by the appellant in his action.

Action brought on 11 September 2006 — Professional Golfers' Association v OHIM — Ladies Professional Golf Association (LPGA)

(Case T-248/06)

(2006/C 261/52)

Language in which the application was lodged: English

Parties

Applicant: The Professional Golfers' Association Limited (Sutton Coldfield, United Kingdom) (represented by: D. McFarland, Barrister)

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

Other party to the proceedings before the Board of Appeal: Ladies Professional Golf Association (Corporation) (Daytona Beach, USA)

Form of order sought

- Annul the decision of the Second Board of Appeal of OHIM of 11 July 2006 in Case number R1087/2005-2 in its entirety on the grounds that Articles 73 and 74 of Council Regulation No 40/94 were breached; and
 - order the case to be referred back to the Board of Appeal and be reheard by a different panel of judges from those who deliberated in the decision issued on 11 July 2006;
- or, in the alternative, if the Court finds that Articles 73 and 74 of Council Regulation 40/94 were not breached:
- overturn the decision of the Second Board of Appeal of OHIM of 11 July 2006 in Case number R1087/2005-2 and find in favour of The Professional Golfers' Association Limited;
- and
- order that the costs of the proceedings be borne by the defendant.

Pleas in law and main arguments

Applicant for the Community trade mark: Ladies Professional Golf Association Corp.

Community trade mark concerned: The figurative mark 'LPGA' for goods and services in classes 25, 28 and 41 — application No 2 354 173

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

Mark or sign cited: The Community word mark 'PGA' for goods and services in classes 16, 25, 28, 37, 41 and 42

Decision of the Opposition Division: Rejection of the opposition in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Violation of Article 73 of Council Regulation No 40/94 as neither of the parties has the opportunity to comment on the results of the Internet research carried out by the Board of Appeal.

Violation of Article 74 of the regulation as the Board of Appeal took into account facts that had not been introduced or substantiated by the parties and did not take into account facts, evidence and arguments, which had been duly introduced by the applicant.

Action brought on 8 September 2006 — Niko Tube and Nyzhniodniprovskiy Tube Rolling Plant v Council

(Case T-249/06)

(2006/C 261/53)

Language of the case: English

Parties

Applicants: Nikopol Seamless Tubes Plant Closed Joint Stock Company (Niko Tube) (Nikopol, Ukraine) and Nyzhniodniprovskiy Tube Rolling Plant Open Joint Stock Company (Dnipropetrovsk, Ukraine) (represented by: H.-G. Kamann and P. Vander Schueren, lawyers)

Defendant: Council of the European Union

Form of order sought

- Annul the contested regulation as far as it concerns the applicants;
- order to Council to pay the costs.

Pleas in law and main arguments

The applicants, who are Ukrainian producers of seamless tubes and pipes, seek the annulment of Council Regulation No 954/2006⁽¹⁾ imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes originating in among others Ukraine.

In support of their application, the applicants invoke that the Council:

- determined the normal value on the basis of a manifest error of assessment and contrary to the principle of non-discrimination by taking into account products that were not manufactured by the applicants;

- made a material injury determination in breach of Article 3 of the Basic Regulation⁽²⁾ given that the Community producers did not fully cooperate;
- acted in breach of Article 5(4) of the Basic Regulation by not terminating the proceeding in light of the non-cooperation by the Community industry;
- committed a manifest error of assessment under Article 2(10) of the Basic Regulation by deducting an assumed commission from the export price of the sales company Sepco;
- breached the principle of non-discrimination in considering and ultimately rejecting an offer of undertaking by the applicants; and
- breached the rights of defence of the applicants and Article 253 EC by not adequately stating reasons for its decision.

⁽¹⁾ Council Regulation (EC) No 954/2006 of 27 June 2006 imposing definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine, repealing Council Regulations (EC) No 2320/97 and (EC) No 348/2000, terminating the interim and expiry reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, *inter alia*, in Russia and Romania and terminating the interim reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, *inter alia*, in Russia and Romania and in Croatia and Ukraine (OJ 2006 L 175, p. 4).

⁽²⁾ Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

Action brought on 15 September 2006 — Radio Regenbogen Hörfunk in Baden v OHIM (RadioCom)

(Case T-254/06)

(2006/C 261/54)

Language of the case: German

Parties

Applicant: Radio Regenbogen Hörfunk in Baden GmbH & Co. KG (Mannheim, Germany) (represented by W.W. Göpfert, lawyer)

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