

Judgment of the Court of First Instance of 4 October 2006
— Freixenet v OHIM (Shape of a frosted white bottle)

(Case T-190/04) ⁽¹⁾

(Community trade mark — Shape of a frosted white bottle — Absolute ground of refusal — Article 7(1)(b) of Regulation (EC) No 40/94 — Lack of distinctive character — Infringement of the rights of the defence — Article 73 of Regulation No 40/94)

(2006/C 281/54)

Language of the case: French

Parties

Applicant: Freixenet, SA (Sant Sadurní d'Anoia, Spain) (represented by: F. de Visscher, E. Cornu, É. De Gryse and D. Moreau, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: I. de Medrano Caballero, Agent)

Re:

Action for annulment of the decision of the Fourth Board of Appeal of OHIM of 11 February 2004 (Case R 97/2001-4) concerning registration of a mark in the form of a frosted white bottle as a Community trade mark

Operative part of the judgment

The Court:

1. Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 11 February 2004 (Case R 97/2001-4);
2. Dismisses the remainder of the action;
3. Orders OHIM to bear its own costs and to pay those of the applicant.

⁽¹⁾ OJ C 201, 7.8.2004.

Judgment of the Court of First Instance of 13 September 2006
— MIP METRO v OHIM Tesco Stores (METRO)

(Case T-191/04) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for a figurative mark consisting of the word mark METRO — Earlier national word mark METRO — Expiry of protection of earlier national trade mark)

(2006/C 281/55)

Language of the case: English

Parties

Applicant: MIP METRO Group Intellectual Property GmbH & Co. KG (Düsseldorf, Germany) (represented by: R. Kaase, avocat)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the Court of First Instance: Tesco Stores Ltd (Cheshunt, United Kingdom) (represented by: S. Malynicz, Barrister)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 March 2004 (Case R 486/2003-1), relating to opposition proceedings between MIP Metro Group Intellectual Property GmbH & Co. KG and Tesco Stores Ltd.

Operative part of the judgment

The Court:

1. Declares that the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 March 2004 (Case R 486/2003-1) is annulled;
2. Orders OHIM to bear its own costs and to pay those incurred by the applicant;
3. Orders the intervener to bear its own costs.

⁽¹⁾ OJ C 201, 7.8.2004.