

Finally, the contested decision infringes the principle of sound administration, in that the applicant was forced by that decision to bring a new action against a decision pending before the courts at the time of bringing that action.

(¹) Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).

Action brought on 11 December 2006 — Bomba Energia Getränke v OHIM — Eckes-Granini (Bomba)

(Case T-372/06)

(2007/C 42/44)

Language in which the application was lodged: German

Parties

Applicant: Bomba Energia Getränke Vertriebs GmbH (Wiener Neudorf, Austria) (represented by: A. Kockläuner, lawyer)

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

Other party to the proceedings before the Board of Appeal: Eckes-Granini GmbH & Co. KG (Nieder-Olm, Germany)

Form of order sought

- annul in its entirety the decision of the Second Board of Appeal of OHIM of 3 October 2006 in Appeal Case R 184/2005-2;
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: The word mark 'Bomba' for goods in Classes 32 and 33 (Application No 558 874).

Proprietor of the mark or sign cited in the opposition proceedings: Eckes-Granini GmbH & Co. KG.

Mark or sign cited in opposition: Various word and figurative marks 'la bamba', including the German word mark 'la bamba' for goods in Classes 29, 32 and 33.

Decision of the Opposition Division: Rejection of the application.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: The contested decision infringes Article 8(1)(b) of Regulation (EC) No 40/94 (¹), in as much as there is no likelihood of confusion between the opposing marks.

(¹) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 13 December 2006 — Rath v OHIM — Grandel (Epican Forte)

(Case T-373/06)

(2007/C 42/45)

Language in which the application was lodged: German

Parties

Applicant: Matthias Rath (Cape Town, South Africa) (represented by: S. Ziegler, C. Kleiner and F. Dehn, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Dr. Grandel GmbH

Form of order sought

The applicant claims that the Court should:

- set aside the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 5 October 2006 in so far as it refuses to allow the Community trade mark application in respect of the goods in Class 5 'food supplements not for medical purposes, mainly consisting of vitamins, amino acids, minerals and trace elements; dietetic substances not adapted for medical use, namely amino acids and trace elements; the aforesaid goods not for use as antiepileptics';
- order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'Epican Forte' for goods in Classes 5, 30 and 32 (Application No 2 525 251)

Proprietor of the mark or sign cited in the opposition proceedings: Dr. Grandel GmbH