

Judgment of the Court of First Instance of 16 September 2009 — Zero Industry v OHIM — zero Germany (zerorh+)

(Case T-400/06) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for figurative Community mark zerorh+ — Earlier national figurative and word marks zero — Likelihood of confusion — Similarity of the signs — Similarity between products — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009)

(2009/C 267/95)

Language of the case: English

Parties

Applicant: Zero Industry Srl (Mariano Comense, Italy) (represented by: M. Rapisardi and N. Colombo, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Botis, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the Court of First Instance: zero Germany GmbH & Co. KG, formerly zero International Holding GmbH & Co. KG (Bremen, Germany) (represented by: W.-D. Kuntze, lawyer)

Re:

Action for annulment of the decision of the First Board of Appeal of OHIM of 5 October 2006 (Case R 958/2005-1) concerning opposition proceedings between zero Germany GmbH & Co. KG and Zero Industry Srl.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Zero Industry Srl to pay the costs.

⁽¹⁾ OJ C 56, 10.3.2007.

Judgment of the Court of First Instance of 16 September 2009 — JanSport Apparel v OHIM (BUILT TO RESIST)

(Case T-80/07) ⁽¹⁾

(Community trade mark — Application for the Community word mark BUILT TO RESIST — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009)

(2009/C 267/96)

Language of the case: English

Parties

Applicant: JanSport Apparel Corp. (Wilmington, Delaware, United States) (represented by: C. Bercial Arias, C. Casalonga and K. Dimidjian-Lecompte, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Laitinen initially, and subsequently by O. Mondéjar Ortuño, acting as Agents)

Re:

Action brought against the decision of 12 January 2007 of the Second Board of Appeal of OHIM (Case R 1090/2006-2) concerning an application for registration of the word mark BUILT TO RESIST as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders JanSport Apparel Corp. to pay the costs.

⁽¹⁾ OJ C 95, 28.4.2007.

Judgment of the Court of First Instance of 23 September 2009 — Fratex Industria e Comércio v OHIM — USA Track & Field (TRACK & FIELD USA)

(Case T-103/07) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for figurative Community mark TRACK & FIELD USA — Earlier national figurative mark TRACK & FIELD — Relative ground for refusal — No likelihood of confusion — Lack of similarity between the signs — Article 8(1)(b) of Regulation (EC) No 40/94 [now Article 8(1)(b) of Regulation (EC) No 207/2009]

(2009/C 267/97)

Language of the case: Spanish

Parties

Applicant: Fratex Indústria e Comércio, Ltda (São Paulo, Brasil) (represented by: B. Braga da Cruz, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: O. Mondéjar Ortuño, Agent)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: USA Track & Field, Inc (Indiana, United States of America)

Re:

Action brought against the decision of 18 January 2007 of the Fourth Board of Appeal of OHIM (Case No R. 1061/2005-4) concerning opposition proceedings between Fratex Indústria e Comércio, Ltda and USA Track & Field, Inc

Operative part of the judgment

The Court:

1. Dismisses the application.
2. Orders Fratex Indústria e Comércio, Ltda to pay the costs

⁽¹⁾ OJ C 140, 23.6.2007.

Judgment of the Court of First Instance of 16 September 2009 — Pigasos Alieftiki Naftiki Etairia v Council and Commission

(Case T-162/07) ⁽¹⁾

(Non-contractual liability — Customs union — Proof of the Community nature of products of sea-fishing — Submission of certain documents as proof not possible — Sufficiently serious breach of a rule of law conferring rights on individuals — Liability of the Community in the absence of unlawful conduct by its bodies)

(2009/C 267/98)

Language of the case: Greek

Parties

Applicant: Pigasos Alieftiki Naftiki Etairia (Moschato, Greece) (represented by: N. Skandamis and E. Perakis, lawyers)

Defendants: Council of the European Union (represented initially by F. Florindo Gijón and M.-M. Joséphidès, and subsequently by F. Florindo Gijón and M. Balta, Agents); and Commission of the European Communities (represented initially by E. Cujo, S. Schønberg and M. Konstantinidis, and subsequently by S. Schønberg and M. Patakia, Agents)

Re:

Action for damages to compensate for the damage alleged to have been suffered by the applicant as a result of the fact that the Council and the Commission did not adopt provisions enabling the customs authorities of a Member State to accept as proof of the Community nature of products of sea-fishing documents other than the T2M form provided for in Commission Regulation (EEC) No 2454/93 of 2 July 1993

laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Pigasos Alieftiki Naftiki Etairia to pay the costs.

⁽¹⁾ OJ C 155, 7.7.2007.

Judgment of the Court of First Instance of 16 September 2009 — Promomadrid v OHIM (MADRIDEXPORTA)

(Case T-180/07) ⁽¹⁾

(Community trade mark — Application for Community figurative mark MADRIDEXPORTA — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009)

(2009/C 267/99)

Language of the case: Spanish

Parties

Applicant: Promomadrid Desarrollo Internacional de Madrid, SA (Madrid, Spain) (represented by: M. Aznar Alonso, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Palmero Cabezas, Agent)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 7 March 2007 (Case R 1130/2006-1) concerning an application for registration of the figurative mark MADRID-EXPORTA as a Community trade mark.

Operative part of the judgment

The Court:

1. Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 7 March 2007 (Case R 1130/2006-1);
2. Orders OHIM to pay the costs.

⁽¹⁾ OJ C 155, 7.7.2007.