

Forms of order sought

- Annul the decision of the First Board of Appeal of 10 April 2008 — R 709/2007-1, notified on 15 April 2008;
- Order AD Bulgartabac Holding to pay the reimbursable costs, including those of the main proceedings and including those of the defendant;
- In the alternative, while annulling the decision of 10 April 2008 and that of 7 March 2007 — 1415C — declare that the application by AD Bulgartabac Holding of 8 November 2005 was inadmissible.

Pleas in law and main arguments

Registered Community trade mark in respect of which revocation was applied for: the figurative mark 'Bahman' for goods in Class 34 (Community trade mark No 427 336).

Proprietor of the Community trade mark: Iranian Tobacco Company.

Applicant in the revocation proceedings: AD Bulgartabac Holding.

Decision of the Cancellation Division: Decision declaring the Community trade mark concerned to be revoked.

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

Pleas in law: The admissibility requirements concerning the application by AD Bulgartabac Holding which OHIM is obliged to consider of its own motion were not taken into account, contrary to Community law, Regulation (EC) No 40/94 ⁽¹⁾ and other principles of procedure.

⁽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 June 2008 — Mineralbrunnen Rhön-Sprudel Egon Schindel v OHIM — Schwarzbräu (ALASKA)

(Case T-225/08)

(2008/C 223/82)

Language in which the application was lodged: German

Parties

Applicant: Mineralbrunnen Rhön-Sprudel Egon Schindel GmbH (Ebersburg, Germany) (represented by: P. Wadenbach, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Schwarzbräu GmbH (Zusmarshausen, Germany)

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 April 2008 (Case R 877/2004-4);
- Completely delete the Community trade mark No 505 552 'ALASKA' owing to the existence of absolute grounds for refusal;
- Order the defendant to bear the costs of the proceedings;
- In the alternative to the second application, declare Community trade mark No 505 552 'ALASKA' invalid at least in respect of the following goods: 'Mineral waters and carbonated waters and other non-alcoholic drinks in Class 32'.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the figurative mark 'ALASKA' for goods in Class 32 (Community trade mark No 505 552)

Proprietor of the Community trade mark: Schwarzbräu GmbH

Applicant for the declaration of invalidity: Mineralbrunnen Rhön-Sprudel Egon Schindel GmbH

Decision of the Cancellation Division: Rejection of the application for the declaration of invalidity of the trade mark concerned.

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

Pleas in law: Infringement of Article 7(1)(b), (c) and (g) of Regulation (EC) No 40/94 ⁽¹⁾.

⁽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 June 2008 — Mineralbrunnen Rhön-Sprudel Egon Schindel v OHIM — Schwarzbräu (Alaska)

(Case T-226/08)

(2008/C 223/83)

Language in which the application was lodged: German

Parties

Applicant: Mineralbrunnen Rhön-Sprudel Egon Schindel GmbH (Ebersburg, Germany) (represented by: P. Wadenbach, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Schwarzbräu GmbH (Zusmarshausen, Germany)

Action brought on 17 June 2008 — Asenbaum Fine Arts v OHIM (WIENER WERKSTÄTTE)

(Case T-230/08)

(2008/C 223/84)

Language of the case: German

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 April 2008 (Case R 1124/2004-4);
- cancel Community trade mark No 505 503 'Alaska' entirely, on account of the existence of absolute grounds for refusal;
- order the defendant to pay the costs;
- in the alternative to the second head of claim, declare Community trade mark No 505 503 'Alaska' invalid in respect, at least, of the following goods: 'Mineral and aerated waters and other non-alcoholic drinks in class 32'.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'Alaska' for goods in class 32 (Community trade mark No 505 503).

Proprietor of the Community trade mark: Schwarzbräu GmbH.

Applicant for the declaration of invalidity: The applicant.

Decision of the Cancellation Division: Application for a declaration of invalidity of the trade mark concerned granted in part.

Decision of the Board of Appeal: Annulment of the contested decision and dismissal of the application for a declaration of invalidity of the trade mark concerned.

Pleas in law: Infringement of Article 7(1)(b), (c) and (g) of Regulation (EC) No 40/94 ⁽¹⁾.

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

Parties

Applicant: Asenbaum Fine Arts Ltd (London, United Kingdom) (represented by: P. Vögel, lawyer)

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

Form of order sought

- Alter the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 10 April 2008 (R 1573/2006-4) so as to allow the applicant's appeal of 29 November 2006 in its entirety, or in the alternative, to allow the appeal for Classes 6, 11 (excluding lamps (electric), fitted lamps, ceiling lamps and floor lamps), 14 (excluding chocolates), 16, 20, 21 (excluding chocolates) and 34;

In the alternative annul the contested decision and refer the matter back to the Office for Harmonisation in the Internal Market to complete the proceedings;

- Order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings, including the costs of the appeal proceedings.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'WIENER WERKSTÄTTE' for goods in Classes 6, 11, 14, 16, 20, 21 and 34 (Application No 4 133 501).

Decision of the Examiner: Application rejected.

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

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 ⁽¹⁾ in that the trade mark applied for is neither descriptive nor devoid of distinctive character.

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