

Pleas in law and main arguments

Community trade mark concerned: a figurative mark, which represents a green casing

Decision of the Examiner: rejection of the application

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation (EC) No 40/94 (now Article 7(1)(b) of Council Regulation (CE) No 207/2009 ⁽¹⁾) as the mark applied for has the requisite distinctive character

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

**Action brought on 6 July 2009 — i-content Ltd
Zweigniederlassung Deutschland v OHIM (BETWIN)**

(Case T-258/09)

(2009/C 205/82)

Language in which the application was lodged: German

Parties

Applicant: i-content Ltd Zweigniederlassung Deutschland (Berlin, Germany) (represented by A. Nordermann, lawyer)

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

Form of order sought

— Annul the decision of the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 May 2009 in appeal case R 1528/2008-4 concerning Community trade mark application No 006849641 — word mark: BETWIN — and the earlier decision of the Office of 10 September 2008 concerning Community trade mark application No 006849641 — word mark: BETWIN;

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: word mark 'BETWIN' for services in Classes 35, 38 and 41 (application No 6849641)

Decision of the Examiner: rejection of the application

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation (EC) No 40/94 (now Article 7(1)(b) and (c) of Council Regulation (CE) No 207/2009 ⁽¹⁾) as the mark applied for has the requisite distinctive character and there is no need to maintain it in the public domain; Infringement of Article 79 of Regulation (EC) No 207/2009, the principle of equal treatment in connection with Articles 6 and 14 ECHR; infringement of Article 49 EC

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

**Action brought on 6 July 2009 — Defense Technology v
OHIM — DEF-TEC Defense Technology (FIRST DEFENSE
AEROSOL PEPPER PROJECTOR)**

(Case T-262/09)

(2009/C 205/83)

Language in which the application was lodged: English

Parties

Applicants: Defense Technology Corporation of America (Jacksonville, United States) (represented by: R. Kunze, lawyer and Solicitor)

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

Other party to the proceedings before the Board of Appeal: DEF-TEC Defense Technology GmbH (Frankfurt/Main, 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 4 May 2009 in case R 493/2002-4 (II); and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark 'FIRST DEFENSE AEROSOL PEPPER PROJECTOR', for goods in classes 5, 8 and 13 — application No 643 668

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

Mark or sign cited: United States trade mark registration for the word mark 'FIRST DEFENSE' for goods in class 13; Two United States trade mark registrations of figurative marks for goods in class 13; An earlier well-known mark in Belgium, Germany and France 'FIRST DEFENSE'; An earlier well-known mark in Belgium, Germany and France 'FIRST DEFENSE AND DESIGN'; An earlier non-registered work mark 'FIRST DEFENSE' protected in Germany and France; An earlier non-registered mark in Belgium, Germany and France 'FIRST DEFENSE AND DESIGN'; A trade name 'FIRST DEFENSE', protected in Germany

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Annulled the decision of the Opposition Division and rejected the opposition

Pleas in law: Infringement of Article 8(3) of Council Regulation 207/2009 as the Board of Appeal did not properly apply the said provision and, moreover, wrongly rendered a decision based on a flawed understanding of the facts presented; Infringement of Articles 65, 75 and 76 of Council Regulation 207/2009 as the Board of Appeal failed to take the necessary measures to comply with the judgment of the Court of First Instance of 6 September 2006 in case T-6/05 DEF-TEC Defense Technology v OHIM — Defense Technology (FIRST DEFENSE AEROSOL PEPPER PROJECTOR)

Action brought on 7 July 2009 — Mannatech v OHIM (BOUNCEBACK)

(Case T-263/09)

(2009/C 205/84)

Language of the case: English

Parties

Applicant(s): Mannatech, Inc. (Coppell, United States) (represented by R. Niebel and C. Steuer, lawyers)

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

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 March 2009 in case R 100/2009-1; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark "BOUNCEBACK" for goods in class 5

Decision of the examiner: Refused the applicant's trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) and (2) of Council Regulation 207/2009 as the Board of Appeal erred in its application of the legal standards laid down in the said legal provisions.

Action brought on 10 July 2009 — Serrano Aranda v OHIM — Burg Groep (LE LANCIER)

(Case T-265/09)

(2009/C 205/85)

Language in which the application was lodged: Spanish

Parties

Applicant: Enrique Serrano Aranda (Murcia, Spain) (represented by: J. Calderón Chavero and T. Villate Consonni, 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: Burg Groep BV (Bergen, Netherlands)

Form of order sought

— Annulment of the decision of the First Board of Appeal of OHIM of 27 March 2009 in Case R-366/2008-1.

— On the basis of that annulment, uphold the opposition and implement the legal consequences arising therefrom by rejecting Community trade mark application 3 343 365 in its entirety.

— Order OHIM and any intervening parties to pay the costs of these proceedings, should they be opposed, and reject the forms of order which OHIM and the intervening parties seek.

Pleas in law and main arguments

Applicant for a Community trade mark: Burg Groep B.V.