



Reports of Cases

Case T-383/10

Continental Bulldog Club Deutschland eV

v

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

(Community trade mark — Application for Community word mark CONTINENTAL —
Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation
(EC) No 207/2009)

Summary — Judgment of the General Court (Second Chamber), 17 April 2013

1. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks composed exclusively of signs or indications which may serve to designate the characteristics of goods — Objective — Need to preserve availability — Scope of the examination*

(Council Regulation No 207/2009, Art. 7(1)(c))

2. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks composed exclusively of signs or indications which may serve to designate the characteristics of goods — Concept*

(Council Regulation No 207/2009, Art. 7(1)(c))

3. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks composed exclusively of signs or indications which may serve to designate the characteristics of goods — Assessment of the descriptive nature of a sign — Criteria*

(Council Regulation No 207/2009, Art. 7(1)(c))

4. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks composed exclusively of signs or indications which may serve to designate the characteristics of goods — Word mark CONTINENTAL*

(Council Regulation No 207/2009, Art. 7(1)(c))

5. *Community trade mark — Decisions of the Office — principle of equal treatment — Principle of sound administration — Previous decision-making practice of the Office*

6. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Overlap between the scope of the grounds for refusal set out in subparagraphs (b) and (c) of Article 7(1) of Regulation No 207/2009*

(Council Regulation No 207/2009, Art. 7(1)(b) and (c))

1. Article 7(1)(c) of Regulation No 207/2009 pursues an aim which is in the public interest, which requires that the signs or indications which are descriptive of the characteristics of the goods or services in respect of which registration is sought may be freely used by all. That public interest gives rise to a prospective examination, relating to the descriptiveness of the indications or of the signs for which registration as a trade mark has been sought, which cannot depend on commercial intentions, by their nature subjective, of the trade mark applicants.

(see paras 13, 61)

2. See the text of the decision.

(see paras 14, 15, 33)

3. See the text of the decision.

(see para. 16)

4. The word mark CONTINENTAL, registration of which is sought for 'live animals, i.e. dogs' and 'the keeping and breeding of dogs, i.e. puppies and animals for breeding' falling respectively within Classes 31 and 44 of the Nice Agreement is descriptive of the goods and services at issue, within the meaning of Article 7(1)(c) of Regulation No 207/2009 on the Community trade mark, from the point of view of the relevant public.

Both in Germany and in the rest of the European Union, the term 'continental bulldog' could be used, as early as the date of the application for registration, at least by that part of the relevant public made up of professionals, such as dog breeders or pet shop owners, as the designation of a breed of dog recognised in Switzerland. Once the recognition process of a breed of dog by one or more of the above federations is completed, the name of that breed designates, in a generic manner, the dogs belonging to it, at least in the eyes of part of the relevant public. Thus the trade mark applied for, comprising the word 'continental', is directly understood by the relevant public as a description of a breed of bulldogs or, in relation to the services targeted, as a specification in so far as it concerns dogs of that same breed.

(see paras 18, 19, 40, 52, 53, 69)

5. See the text of the decision.

(see paras 65, 66)

6. See the text of the decision.

(see para. 72)