



Reports of Cases

Judgment of the General Court (First Chamber) of 8 March 2013 — Mayer Naman v OHIM — Daniel e Mayer (David Mayer)

(Case T-498/10)

(Community trade mark — Invalidity proceedings — Community figurative mark David Mayer — Earlier national word mark DANIEL & MAYER MADE IN ITALY — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) and Article 53(1)(a) of Regulation (EC) No 207/2009 — Request for proof of genuine use made for the first time before the Board of Appeal — Out of time — Article 57(2) and (3) of Regulation No 207/2009)

1. *Judicial proceedings — Application initiating proceedings — Subject-matter of the dispute — Delimitation — Alteration once proceedings have been started — Prohibition (Rules of Procedure of the General Court, Art. 48(2)) (see para. 23)*
2. *Community trade mark — Appeals procedure — Action before the EU judicature — Jurisdiction of the General Court — Review of the lawfulness of decisions of the Boards of Appeal — Account taken by the General Court of matters of law and fact which have not been raised previously before the departments of OHIM — Exclusion (Rules of Procedure of the General Court, Art. 135(4); Council Regulation No 207/2009, Arts 65(2), and 76) (see para. 25)*
3. *Community trade mark — Surrender, revocation and invalidity — Examination of the application — Proof of use of the earlier mark — Request presented expressly and on time by the applicant — Possibility of submitting the application for the first time before the Board of Appeal — Exclusion (Council Regulation No 207/2009, Art. 57(2) and (3); Commission Regulation No 2868/95, Art. 1, Rules 20(2), 22(1), and 40(6)) (see paras 34-37)*
4. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Assessment of the likelihood of confusion — Criteria (Council Regulation No 207/2009, Art. 8(1)(b)) (see paras 46-48)*
5. *Community trade mark — Surrender, revocation and invalidity — Relative grounds for invalidity — Existence of an identical or similar earlier mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Figurative mark David Mayer and word mark DANIEL & MAYER MADE IN ITALY (Council Regulation No 207/2009, Art. 8(1)(b)) (see paras 53, 73, 101, 115)*

6. *Community trade mark — Procedural provisions — Statement of reasons for decisions — Article 75, first sentence, of Regulation No 207/2009 — Scope identical to that of Article 296 TFEU (Art. 296 TFEU; Council Regulation No 207/2009, Art. 75, first sentence) (see para. 56)*
7. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Similarity between the goods or services in question — Complementary nature of the goods or services — Clothes, shoes and hats falling under Class 25 of the Nice Agreement and leather and imitation leather clothing accessories falling under Class 18 of that agreement (Council Regulation No 207/2009, Art. 8(1)(b)) (see paras 68-70)*
8. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Weighting of the similarities and differences of the marks concerned — Objective marketing considerations to be taken into account (Council Regulation No 207/2009, Art. 8(1)(b)) (see paras 106, 107)*
9. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark — Criteria for assessment — Coexistence of two marks on a given market (Council Regulation No 207/2009, Art. 8(1)(b)) (see para. 108)*

Re:

ACTION brought against the decision of the First Board of Appeal of OHIM of 26 July 2010 (Case R 413/2009-1) relating to invalidity proceedings between Daniel e Mayer Srl and Mr David Mayer Naman.

Operative part

The Court:

1. Dismisses the action;
2. Orders Mr David Mayer Naman to pay the costs.