

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark 'bluepod media', for goods and services in classes 9, 35, 38 and 41 — Community trade mark application No 6099709

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

Mark or sign cited in opposition: Community trade mark registration No 5660972 for the figurative mark 'blue spot', for services in classes 35, 36, 37 and 38; International trade mark registration No 880800 for the word mark 'BlueSpot', for services in classes 35, 37 and 38; German trade mark registration No 30472373 for the word mark 'BlueSpot', for services in classes 35, 37 and 38

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Partially allowed the appeal and partially rejected the application. Correspondingly, allowed the application in the remainder and partially rejected the opposition.

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assessed that there was no likelihood of confusion.

Action brought on 4 May 2011 — Stichting Greenpeace Nederland and PAN Europe v Commission

(Case T-232/11)

(2011/C 194/31)

Language of the case: English

Parties

Applicants: Stichting Greenpeace Nederland (Amsterdam, Netherlands) and Pesticide Action Network Europe (PAN Europe) (Brussels, Belgium) (represented by: B. Kloostra, lawyer)

Defendant: European Commission

Form of order sought

— Declare the Commission's Decision of 1 March 2011 (Ares(2011)223668) contrary to Regulation No 1367/2006/EC⁽¹⁾;

— Annul the Commission's Decision of 1 March 2011 (Ares(2011)223668);

— Instruct the Commission to assess the substance of the request for internal review of 20 December 2010, within a period of time determined by the Court;

— Order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicants rely on two pleas in law.

1. First plea in law, alleging that the defendant was under an obligation to carry out the internal review of Directive 2010/77/EU⁽²⁾, as requested by the applicants, on the ground that the said directive is not of general application, as the defendant stated, but rather an act containing concrete and individual decisions based on individual applications of the producers concerned.
2. Second plea in law, alleging that the contested decision is contrary to Regulation No 1367/2006/EC as Directive 2010/77/EU contains several administrative acts concerning individual decisions on individual applications. In addition, since the said directive has not been adopted in Commission's legislative capacity, access to justice concerning such directive should be guaranteed.

⁽¹⁾ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13)

⁽²⁾ Commission Directive 2010/77/EU of 10 November 2010 amending Council Directive 91/414/EEC as regards the expiry dates for inclusion in Annex I of certain active substances (OJ 2010 L 293, p. 48)

Action brought on 26 April 2011 — Glaxo Group v OHIM — Farmodiética (ADVANCE)

(Case T-243/11)

(2011/C 194/32)

Language in which the application was lodged: English

Parties

Applicant: Glaxo Group Ltd (Greenford, United Kingdom) (represented by: O. Benito, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Farmodiética — Cosmética, Dietética e Produtos Farmacêuticos, Lda (Estdarda de S.Marcos, Portugal)

Form of order sought

- Stay the proceedings until an invalidity action in Portugal is decided since this invalidity action is challenging the only basis upon which the CTM No 6472971 was rejected, and if this invalidity action is not successful;
- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 February 2011 in case R 665/2010-4; and
- Order the defendant and/or the other party to the proceedings before the Board of Appeal to bear the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'ADVANCE', for goods in class 5 — Community trade mark application No 6472971

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Portuguese trade mark registration No 417744 for the figurative mark 'ADVANCIS CAPS MORE BIOAVAILABLE. MORE EFFECTIVE', for goods in classes 3 and 5

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 8(1)(b) and 65(2) of Council Regulation No 207/2009, as the Board of Appeal: (i) deemed that the applicant did not challenge the opposition division's decision of 25 February 2010 as regards the similarity of the goods concerned, (ii) deemed that there was no reason to depart from the opposition division's decision of 25 February 2010 as regards the similarity of the goods concerned, (iii) did not analyse whether the goods concerned in class 3 are similar or dissimilar to the goods concerned in class 5, (iv) did not explain why it was relevant to take into account how the signs are pronounced in English when the relevant territory is Portugal, (v) deemed that the conflicting marks are similar from an aural point of view in English, (vi) applied the incorrect tests as regards comparison of the signs, thus wrongly finding the level of similarity to be average, and (vii) applied incorrect and incomplete tests in assessing global likelihood of confusion.

Action brought on 6 May 2011 — ClientEarth and International Chemical Secretariat v ECHA

(Case T-245/11)

(2011/C 194/33)

Language of the case: English

Parties

Applicants: ClientEarth (London, United Kingdom) and The International Chemical Secretariat (Gothenburg, Sweden) (represented by: P. Kirch, lawyer)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

- Declare the defendant in violation of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters;
- Declare the defendant in violation of Regulation (EC) No 1367/2006 ⁽¹⁾;
- Declare the defendant in violation of Regulation (EC) No 1049/2001 ⁽²⁾;
- Annul the decision set out in the defendant's confirmatory reply of 4 March 2011 to withhold the requested documents; and
- Order the defendant to pay the applicants' costs, including the costs of any intervening party.

Pleas in law and main arguments

By means of their application, the applicants seek, pursuant to Article 263 TFEU, the annulment of the decision set out in the defendant's confirmatory reply of 4 March 2011 not to grant access to documents containing the names and contact details of the registrants (manufacturers/importers) of an important number of alleged dangerous substances for human health and the environment and the tonnage in which they are placed on the EU market.

In support of the action, the applicants rely on five pleas in law.

1. First plea in law, alleging that the contested decision violates Article 8(2) of Regulation No 1049/2001 for not replying within the prescribed time limits to the applicants' confirmatory application and not having a justification for not doing so.