

Judgment of the General Court of 12 July 2019 — Fashion Energy v EUIPO — Retail Royalty (1st AMERICAN)

(Case T-54/18) ⁽¹⁾

(EU trade mark — Opposition proceedings — Application for EU figurative mark 1st AMERICAN — Earlier EU figurative mark representing an eagle — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001 — Audi alteram partem rule — Article 95(1) of Regulation 2017/1001 — Cross claim)

(2019/C 305/54)

Language of the case: English

Parties

Applicant: Fashion Energy Srl (Milan, Italy) (represented by: T. Müller and F. Togo, lawyers)

Defendant: European Union Intellectual Property Office (represented by: L. Rampini and H. O'Neill, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Retail Royalty Co. (Las Vegas, Nevada, USA) (represented by: M. Dick, Solicitor, and J. Bogatz, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 15 November 2017 (Case R 693/2017-2), relating to opposition proceedings between Retail Royalty and Fashion Energy.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 15 November 2017 (Case R 693/2017-2);*
2. *Dismisses the cross-claim as inadmissible;*
3. *In the main appeal, EUIPO and Retail Royalty Co. are ordered to bear their own costs and to each bear half of the costs incurred by Fashion Energy Srl.*
4. *In the cross-claim, Retail Royalty is ordered to bear its own costs and those incurred by Fashion Energy and EUIPO.*

⁽¹⁾ OJ C 123, 9.4.2018.