

Community trade mark concerned: The word mark “PROTI SNACK”, for goods in classes 5, 29, 30 and 32 — application No 4 992 145

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

Mark or sign cited: German trade mark registration No 39 702 429 of the word mark “PROTI” for goods in classes 29 and 32; German trade mark registration No 39 608 644 of the figurative mark “PROTIPOWER” for goods in classes 29 and 32; German trade mark registration No 39 549 559 of the word mark “PROTIPLUS” for goods in classes 29 and 32; German trade mark registration No 39 629 195 of the trade word “PROTITOP” for goods in classes 29, 30 and 32

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal failed to provide an assessment on the merits of the opposition; Infringement of Article 74(2) of Council Regulation 40/94 as the Board of Appeal refused to exercise its discretion or at least failed to state how it exercised such discretion; Misuse of power as the Board of Appeal failed to take into account documents and evidence submitted by the applicant.

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

Other party to the proceedings before the Board of Appeal of OHIM: Suzuki Motor Corporation

Form of order sought

— Annul the decision of the Second Board of Appeal of OHIM of 9 December 2008 in Case R-749/2007-2;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Suzuki Motor Corporation

Community trade mark concerned: Word mark ‘SWIFT GTI’ for goods in Class 12 (application No 3 456 084)

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

Mark or sign cited in opposition: German word mark ‘GTI’ (No 39 406 386) and international word mark ‘GTI’ (No 717 592) for goods in Class 12

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Breach of Article 8(1)(b) of Regulation (EC) 40/94, ⁽¹⁾ since there is a likelihood of confusion between the two opposing marks.

Action brought on 17 February 2009 — Volkswagen AG v OHIM

(Case T-63/09)

(2009/C 102/35)

Language in which the application was lodged: German

Parties

Applicant: Volkswagen AG (Wolfsburg, Germany) (represented by: H.-P. Schrammek, C. Drzymalla and S. Risthaus, lawyers)

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).