

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'FOREVER', for goods in classes 3, 5, 30, 31 and 32 — Community trade mark application No 5617089

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 297697 of the figurative mark '4 EVER', for goods in class 32

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal failed: (i) to correctly assess the proof of use provided by the other party to the proceedings before the Board of Appeal; (ii) to correctly identify the aural differences between the opposed trade marks; (iii) to correctly identify the conceptual differences between the trade marks in conflict; and (iv) to correctly identify the visual differences between the opposed trade marks.

Action brought on 29 September 2011 — Evonik Industries v OHIM — Impulso Industrial Alternativo (Impulso creador)

(Case T-529/11)

(2011/C 362/28)

Language in which the application was lodged: English

Parties

Applicant: Evonik Industries AG (Essen, Germany) (represented by: J. Albrecht, lawyer)

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

Other party to the proceedings before the Board of Appeal: Impulso Industrial Alternativo, SA (Madrid, Spain)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 June 2011 in case R 1101/2010-2; and

— Order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'Impulso creador', for various goods and services among which services in classes 35, 36, 37 and 42 — Community trade mark application No 6146187

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: Spanish trade mark registration No 2633891 of the figurative mark 'IMPULSO', for services in classes 35 and 42; Community trade mark registration No 4438206 of the figurative mark 'IMPULSO', for services in classes 35 and 42

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal did not correctly consider the different overall impression of the conflicting trademarks.

Action brought on 7 October 2011 — Chivas v OHIM — Glencairn Scotch Whisky (CHIVALRY)

(Case T-530/11)

(2011/C 362/29)

Language in which the application was lodged: English

Parties

Applicant: Chivas Holdings (IP) Ltd (Renfrewshire, United Kingdom) (represented by: A. Carboni, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Glencairn Scotch Whisky Co. Ltd (Glasgow, United Kingdom)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 July 2011 in case R 2334/2010-1, and remit the application to OHIM to allow it to proceed; and

— Order the defendant and any intervening parties in this appeal to bear their own costs and those of the applicant, incurred for these proceedings and those of the appeal procedure before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'CHIVALRY', for goods and services in classes 33, 35 and 41 — Community trade mark application No 6616593

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: United Kingdom trade mark registration No 1293610 of the figurative mark 'CHIVALRY', for goods in class 33; United Kingdom trade mark registration No 2468527 of the figurative mark 'CHIVALRY SPECIAL RESERVE SCOTCH WHISKY', for goods in class 33; Non-registered United Kingdom trade mark of the word 'CHIVALRY', used in the course of trade in respect of 'Whisky'

Decision of the Opposition Division: Partly upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 8(1)(b), 76(1) and 75 of Council Regulation No 207/2009, as the Board of Appeal: (i) wrongly made a finding of fact as to the characteristics of the relevant public and failed to state the reasons for making the said finding; (ii) in the alternative to ground 1, having found that the relevant consumer is 'particularly brand-conscious and brand-loyal', incorrectly failed to appreciate that such characteristics would increase the attentiveness of the relevant consumer and accordingly reduce the likelihood of confusion occurring; (iii) failed to take into account of important guidance laid down by the Court of Justice and took the wrong approach when comparing the marks; (iv) wrongly identified the word 'CHIVALRY' as the visually dominant element of the earlier mark and incorrectly concluded that the other figurative and word elements play a secondary role; (v) wrongly assumed that the aural comparison of the marks could be approached in the same way as the visual comparison; and (vi) incorrectly assessed likelihood of confusion.

Action brought on 10 October 2011 — Hultafors Group v OHIM — Società Italiana Calzature (Snickers)

(Case T-537/11)

(2011/C 362/30)

Language in which the application was lodged: English

Parties

Applicant: Hultafors Group AB (Bollebygd, Sweden) (represented by: A. Rasmussen and T. Swanström, lawyers)

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

Other party to the proceedings before the Board of Appeal: Società Italiana Calzature SpA (Milano, Italy)

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 August 2011 in case R 2519/2010-4; and
- Order the defendant to bear its own as well as the third party's costs, including those incurred during the appeal and opposition proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark in black and white 'Snickers', for goods in classes 8, 9 and 25 — Community trade mark application No 3740719

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: Italian trade mark registration No 348149 of the word mark 'KICKERS', for goods in classes 3, 14, 16, 18, 24, 25, 28, 32 and 33

Decision of the Opposition Division: Upheld the opposition for all the contested goods

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assumed that a risk of confusion exists between the trade mark application and the opposing trademark.

Action brought on 10 October 2011 — Fundação Calouste Gulbenkian v OHIM — Gulbenkian (GULBENKIAN)

(Case T-541/11)

(2011/C 362/31)

Language in which the application was lodged: English

Parties

Applicant: Fundação Calouste Gulbenkian (Lisboa, Portugal) (represented by: G. Marín Raigal, P. López Ronda and G. Macias Bonilla, lawyers)

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

Other party to the proceedings before the Board of Appeal: Micael Gulbenkian (Oeiras, Portugal)