

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'WM 2006' for goods and services in classes 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42 — Community trade mark registration No 2 155 521

Proprietor of the Community trade mark: The applicant

Party requesting the declaration of invalidity of the Community trade mark: The other party to the proceedings before the Board of Appeal

Decision of the Cancellation Division: Rejection of the application for a declaration of invalidity

Decision of the Board of Appeal: Annulment of the decision of the Cancellation Division

Pleas in law: (i) Infringement of Article 73 and 74(1) of Council Regulation No 40/94 in so far as the Board of Appeal has based, largely, its decision on Article 7(1)(c) of Council Regulation No 40/94, a provision which was neither invoked by the other party to the proceedings before the Board of Appeal, nor relied upon by the Cancellation Division; (ii) Alternatively, infringement of Article 7(1)(c) of Council Regulation No 40/94 as the Board of Appeal failed to consider the registered Community trade mark subject of the application for a declaration of invalidity as a whole, through the eyes of the average consumer and to apply the relevant law relating to the assessment of descriptiveness of the goods and/or services applied for; and (iii) Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that the registered Community trade mark subject of the application for a declaration of invalidity was devoid of the necessary distinctive character; and (iv) Infringement of Articles 7(3) and 51(2) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that the registered Community trade mark subject of the application for a declaration of invalidity had not acquired a distinctive character for services in class 41.

Action brought on 29 September 2008 — FIFA v OHIM — Ferrero (WORLD CUP GERMANY)

(Case T-447/08)

(2008/C 313/91)

Language in which the application was lodged: English

Parties

Applicant: Fédération Internationale de Football Association (FIFA) (Zurich, Switzerland) (represented by: D. Alexander QC, A. Barav, Barrister, R. Buchel and C. Rassmann, lawyers)

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

Other party to the proceedings before the Board of Appeal: Ferrero OHG mbH (Stadtallendorf, Germany)

Form of order sought

— Annul, in whole or in part, the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 June 2008 in case R 1469/2005-1; and

— Order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'WORLD CUP GERMANY' for goods and services in classes 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42 — Community trade mark registration No 2 152 635

Proprietor of the Community trade mark: The applicant

Party requesting the declaration of invalidity of the Community trade mark: The other party to the proceedings before the Board of Appeal

Decision of the Cancellation Division: Rejection of the application for a declaration of invalidity

Decision of the Board of Appeal: Annulment of the decision of the Cancellation Division

Pleas in law: (i) Infringement of Article 73 and 74(1) of Council Regulation No 40/94 in so far as the Board of Appeal has based, largely, its decision on Article 7(1)(c) of Council Regulation No 40/94, a provision which was neither invoked by the other party to the proceedings before the Board of Appeal, nor relied upon by the Cancellation Division; (ii) Alternatively, infringement of Article 7(1)(c) of Council Regulation No 40/94 as the Board of Appeal failed to consider the registered Community trade mark subject of the application for a declaration of invalidity as a whole, through the eyes of the average consumer and to apply the relevant law relating to the assessment of descriptiveness of the goods and/or services applied for; and (iii) Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that the registered Community trade mark subject of the application for a declaration of invalidity was devoid of the necessary distinctive character.