

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant before the General Court

Trade mark at issue: Application for European Union figurative mark representing a human figure centered over an escutcheon in colours red, blue, light blue, dark blue, grey and white — Application for registration No 15 273 634

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 30 November 2018 in Case R 876/2018-2

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- dismiss the appeal relating to Opposition Proceedings No. B 2 738 030;
- order EUIPO to pay the costs of the proceedings before the General Court and order the potential intervener to pay the costs before EUIPO.

Pleas in law

- Infringement of Article 94(1), second sentence, of Regulation (EU) 2017/1001 of the European Parliament and of the Council;
- Infringement of Article 91(1), first sentence, of Regulation (EU) 2017/1001 of the European Parliament and of the Council;
- Infringement of Article 46(1)(a) read in conjunction with Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 8 March 2019 — Brunswick Bowling Products v Commission

(Case T-152/19)

(2019/C 155/59)

Language of the case: English

Parties

Applicant: Brunswick Bowling Products LLC (Muskegon, Michigan, United States) (represented by: R. Martens and V. Ostrovskis, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul, in its entirety, the Commission Implementing Decision (EU) 2018/1960 ⁽¹⁾;
- order the Commission to pay all costs.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging a breach of (i) the procedural rules contained in Article 11 of Directive 2006/42/EC of the European Parliament and of the Council ⁽²⁾ and Article 18(5) of Regulation (EC) No 765/2008 of the European Parliament and of the Council ⁽³⁾ and of (ii) the principle of proportionality as stipulated in Article 18(4) of Regulation No 765/2008, since the Swedish safeguard measure is not justified in view of the fact that the applicant was misguided by the market surveillance authorities and that less far reaching measures were available in order to attain compliance with Directive 2006/42/EC.
2. Second plea in law, alleging a breach of the principle of legal certainty and legitimate expectations and of the principle of good administration, since the observations and subsequent approach by the UK, German, Finnish and Danish market surveillance authorities were not taken into account by the Commission and no reasonable and effective implementation term has been foreseen in the Contested Decision.
3. Third plea in law, alleging a breach of procedural rules contained in Annex I of Directive 2006/42/EC, since it appears from the Contested Decision and from the decision of the Swedish Work Environment Authority of 30 August 2013 that no adequate reference is made to the general principle of the state of the art in the examination of the products in question on the basis of essential health and safety requirements (EHSR) laid down in Annex I of Directive 2006/42/EC.
4. Fourth plea in law, alleging that the Commission erred in its assessment of the facts and acted against the principle of good administration, since no necessary information was asked at the manufacturer despite the fact that the Contested Decision states that the manufacturer did not provide in the technical file a link between the references of the harmonized standards and the respective EHSR as required by Annex VII to Directive 2006/42/EC. Indeed, a decent acting reasonable administration would have asked this missing information prior to any decision of this amplitude.
5. Fifth plea in law, alleging a breach of Article 6 of Directive 2006/42/EC and of the principle of equal treatment, as the measure in issue is specifically directed towards the products of the applicant, whilst similar and less compliant products by other manufacturers exist on the EU internal market. Furthermore, by considering only the withdrawal and recall of the products in question, the Contested Decision distorts the market, since similar machines by other manufacturers are still allowed on the EU internal market.

⁽¹⁾ Commission Implementing Decision (EU) 2018/1960 of 10 December 2018 on a safeguard measure taken by Sweden pursuant to Directive 2006/42/EC of the European Parliament and of the Council, to prohibit the placing on the market a type of pinsetter machine and a supplementary kit to be used together with that type of pinsetter machine, manufactured by Brunswick Bowling & Billiards, and to withdraw those machines already placed on the market (notified under document C(2018) 8253) (OJ L 315, 12.12.2018, p. 29).

⁽²⁾ Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (OJ L 157, 9.6.2006, p. 24).

⁽³⁾ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).
