

Form of order sought

- annul the decision of the First Board of Appeal of OHIM of 15 March 2007, Case R 1249/2006-1, in so far as it refused to grant its Community trade mark application CYBERHOME No 4 114 666 for part of the goods and services applied for in Classes 9, 36 and 38;
- the granting of its Community trade mark application CYBERHOME No 4 114 666 for all the goods and services applied for

Pleas in law and main arguments

Community trade mark concerned: Word mark 'CYBERHOME' for goods and services in Classes 9, 36 and 38 (application No 4 114 666)

Decision of the Examiner: Registration refused

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: The applicant submits that, contrary to the Board of Appeal of OHIM's finding in the contested decision, its mark is arbitrary and is sufficiently distinctive in relation to the goods and services applied for to meet the requirements of Council Regulation No 40/94 ⁽¹⁾.

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

Action brought on 23 May 2007 — Anvil Knitwear v OHIM — Aprile e Aprile (Aprile)

(Case T-179/07)

(2007/C 170/62)

Language in which the application was lodged: English

Parties

Applicant: Anvil Knitwear, Inc. (New York, USA) (represented by: G. Würtenberger, T. Wittmann, lawyers, and R. Kunze, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Aprile e Aprile Srl (Frazione Funo, Italy)

Form of order sought

- The decision of the Second Board of Appeal of 22 March 2007 in Case R 1076/2006-2 concerning the opposition

based on German trade mark registration No 30 011 766 'ANVIL' against Community trade mark application No 3 800 232 'Aprile' & device be annulled;

- the opposition against Community trade mark application No 3 800 232 'Aprile' & device be granted and application for registration of Community trade mark No 3 800 232 'Aprile' & device be rejected;
- defendant pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark: Aprile e Aprile Srl

Community trade mark concerned: The figurative mark 'Aprile' for goods in classes 18 and 25 — application No 3 800 232

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

Mark or sign cited: The national word mark 'ANVIL' for goods in class 25

Decision of the Opposition Division: Rejection of the opposition in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Articles 8(1), 73 and 74 of Council Regulation No 40/94 as the Board of Appeal did not evaluate the aspects of the partial identity and partial similarity of the goods in question as well as the increased distinctiveness of the earlier mark. Furthermore the Board of Appeal did neither objectively nor without prejudice state the reasons on which its decision was based, nor did it take the uncontested facts of the proceedings properly into account.

Action brought on 25 May 2007 — Eurocopter v OHIM (STEADYCONTROL)

(Case T-181/07)

(2007/C 170/63)

Language of the case: French

Parties

Applicant: Eurocopter (Marignane, France) (represented by E. Soler Borda, lawyer)

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

Form of order sought

— annulment of the decision of the Fourth Board of Appeal of OHIM of 12 March 2007 concerning the application for a Community trade mark STEADYCONTROL No 3 560 935 (R 8/2006-4) in its entirety.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'STEADYCONTROL' in respect of goods in Classes 9, 12 and 38 (application No 3 560 935)

Decision of the Examiner: Partial refusal of registration in respect of products in Classes 9 and 12

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 7(1)(b) and (c) and of Article 7(2) of Council Regulation No 40/94 ⁽¹⁾ in so far as, according to the applicant and in contrast to the grounds of the contested decision, the word 'STEADYCONTROL' is not descriptive and allows the goods applied for to be distinguished.

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

Action brought on 29 May 2007 — Borco-Marken-Import Matthesen v OHMI — Tequilas del Señor (TEQUILA GOLD Sombrero Negro)

(Case T-182/07)

(2007/C 170/64)

Language in which the application was lodged: English

Parties

Applicant: Borco-Marken-Import Matthesen GmbH & Co. KG (Hamburg, Germany) (represented by: M. Wolter, lawyer)

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

Other party to the proceedings before the Board of Appeal: Tequilas del Señor S A de CV (Guadalajara, Mexico)

Form of order sought

The applicant requests that:

— The decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and

Designs) of 7 March 2007 in Case R 1285/2005-1 be annulled;

— the Office for Harmonisation in the Internal Market (Trade Marks and Designs) be ordered to pay the costs incurred by the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: Tequilas del Señor SA de CV

Community trade mark concerned: The figurative Community trade mark 'TEQUILA GOLD Sombrero Negro' for goods in Class 33 — application No 2 722 122

Proprietor of the mark or sign cited in the opposition proceedings: Borco-Marken-Import Matthesen GmbH & Co. KG

Mark or sign cited: The figurative national trade marks containing the word elements 'SIERRA' and 'CACTUS JACK SHOOTER' as well as the figurative national trade mark picturing a 'red sombrero hat' for goods in Class 33

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 (EC) No 40/94.

Action brought on 25 May 2007 — Avon Products v OHIM (ANEW ALTERNATIVE)

(Case T-184/07)

(2007/C 170/65)

Language of the case: English

Parties

Applicant: Avon Products, Inc. (New York, United States) (represented by: C. Heitmann-Lichtenstein, lawyer)

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

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 22 March 2007 in Case R 1471/2006-2;

— order the defendant to pay the costs.