

Action brought on 14 June 2011 — Süd-Chemie v OHIM — BYK-Cera (CERATIX)

(Case T-312/11)

(2011/C 238/53)

Language in which the application was lodged: German

Parties

Applicant: Süd-Chemie AG (Munich, Germany) (represented by: W. Baron von der Osten-Sacken and A. Wenninger-Lenz, lawyers)

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

Other party to the proceedings before the Board of Appeal: BYK-Cera BV (Deventer, Netherlands)

Form of order sought

The applicant claims that the Court should:

- Annul the contested decision of the Fourth Board of Appeal of OHIM of 8 April 2011 (Case R 1585/2010-4);
- Order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: BYK-Cera BV

Community trade mark concerned: the word mark 'CERATIX' for goods in Class 1 — application No 6 358 832

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

Mark or sign cited in opposition: the national word mark 'CERATOFIX' for goods in Class 1

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the Opposition Division's decision was annulled and the opposition was rejected

Pleas in law: Infringement of Article 15 and Article 42(2) and (3) of Regulation No 207/2009 as the defendant:

- Erred in reducing the evidential value of the documents submitted by the applicant with the general reasoning that they are connected with the applicant itself;
- Did not take account of promotional measures as 'genuine use';
- Did not include all the relevant circumstances in assessing whether the use of the trade mark was genuine and;
- Did not examine the evidence of use provided as a whole.

Action brought on 16 June 2011 — Heede v OHIM (Matrix-Energetics)

(Case T-313/11)

(2011/C 238/54)

Language of the case: German

Parties

Applicant: Günter Heede (Walldorf-Baden, Germany) (represented by R. Utz, lawyer)

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

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 April 2011 in Case R 1848/2010-4;
- Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'Matrix-Energetics' for services in Classes 35, 41 and 44 — application No 8 339 798

Decision of the Examiner: Rejection of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009 as the descriptive character of the mark applied for cannot be determined and the mark applied for has the necessary distinctive character; the Board of Appeal erred in making print-outs from the internet, which dated from after the date of filing of the application for registration, the subject-matter of its decision; and furthermore isolated, illegal instances of use of an originally distinctive (fanciful) description on the part of third parties, which commenced after the date of filing, cannot have a negative influence on the registrability of a Community trade mark.

Action brought on 17 June 2011 — Fortress Participations v OHIM — Fortress Investment Group and Fortress Investment Group (UK) (FORTRESS)

(Case T-314/11)

(2011/C 238/55)

Language in which the application was lodged: English

Parties

Applicant: Fortress Participations BV (Rotterdam, Netherlands) (represented by: M.L.J. van de Braak, lawyer, B. Ladas, Solicitor, and S. Malynicz, Barrister)

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

Other parties to the proceedings before the Board of Appeal: Fortress Investment Group LLC (New York, USA) and Fortress Investment Group (UK) Ltd (London, United Kingdom)

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 1 April 2011 in case R 354/2009-2; and