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Język dokumentu : ▼ ECLI:EU:C:2016:849

JUDGMENT OF THE COURT (First Chamber)
10 November 2016 (*)

(Appeal — European Union trade mark — Three-dimensional mark in the shape of a cube with surfaces having a grid structure — Application for a declaration of invalidity — Rejection of the application for a declaration of invalidity)

In Case C-30/15 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 26 January 2015, **Simba Toys GmbH & Co. KG**, established in Fürth (Germany), represented by O. Ruhl, Rechtsanwalt, appellant,

the other parties to the proceedings being:

European Union Intellectual Property Office (EUIPO), represented by D. Botis and A. Folliard-Monguiral, acting as Agents, defendant at first instance,

Seven Towns Ltd, established in London (United Kingdom), represented by K. Szamosi and M. Borbás, ügyvédek, intervener at first instance,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, E. Regan, J.-C. Bonichot, A. Arabadjiev and S. Rodin (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 2 March 2016,

after hearing the Opinion of the Advocate General at the sitting on 25 May 2016,

gives the following

Judgment

By its appeal, Simba Toys GmbH & Co. KG seeks to have set aside the judgment of the General Court of the European Union of 25 November 2014, *Simba Toys v OHIM — Seven Towns (Shape of a cube with surfaces having a grid structure)* (T-450/09, EU:T:2014:983, 'the judgment under appeal'), by which the General Court dismissed its action for annulment of the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) ('the Board of Appeal') of 1 September 2009 (Case R 1526/2008-2), relating to cancellation proceedings between the appellant and Seven Towns Ltd ('the decision at issue').

Legal context

Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) was repealed and replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1), which entered into force on 13 April 2009.

However, given the timeframe of the facts, the present dispute remains governed by Regulation No 40/94, at least with regard to those provisions which are not strictly procedural.

Article 7 of Regulation No 40/94, entitled 'Absolute grounds for refusal', provides:

'1. The following shall not be registered:

...

trade marks which are devoid of any distinctive character;

trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service;

signs which consist exclusively of:

the shape which results from the nature of the goods themselves; or

the shape of goods which is necessary to obtain a technical result; or

the shape which gives substantial value to the goods;

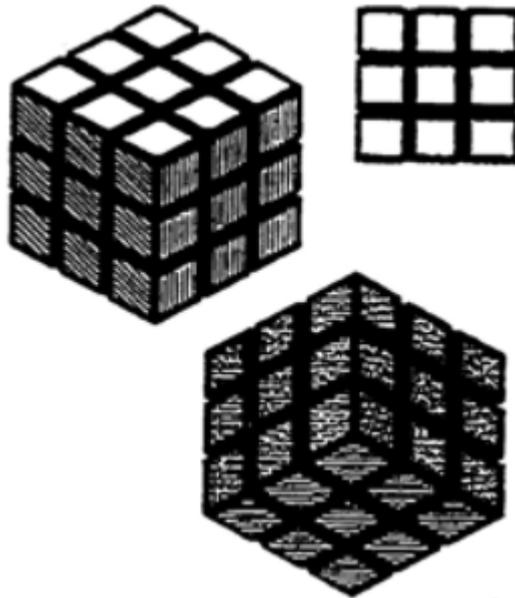
Under Article 74(1) of Regulation No 40/94:

'In proceedings before it the Office shall examine the facts of its own motion; however, in proceedings relating to relative grounds for refusal of registration, the Office shall be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.'

Background to the dispute

The background to the dispute, as set out in paragraphs 1 to 12 of the judgment under appeal, may be summarised as follows.

On 1 April 1996, Seven Towns filed an application for registration of a Community trade mark with EUIPO, relating to the three-dimensional sign reproduced below:



The goods in respect of which registration was sought are in Class 28 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and correspond to the following description: 'three-dimensional puzzles'.

On 6 April 1999, the mark at issue was registered as a Community trade mark under No 162784. It was renewed on 10 November 2006.

On 15 November 2006 Simba Toys filed an application for a declaration of invalidity of that mark pursuant to Article 51(1)(a) of Regulation No 40/94, read in conjunction with Article 7(1)(a) to (c) and (e) thereof.

By decision of 14 October 2008, the Cancellation Division of EUIPO rejected that application in its entirety.

On 23 October 2008, the appellant filed a notice of appeal with EUIPO, pursuant to Articles 57 to 62 of Regulation No 40/94 (now Articles 58 to 64 of Regulation No 207/2009), against that decision. In support of its action it alleged infringement of Article 7(1)(a) to (c) and (e) of Regulation No 40/94.

By the decision at issue, the Board of Appeal confirmed the decision of the Opposition Division of 14 October 2008 and dismissed the action.

The proceedings before the General Court and the judgment under appeal

By application lodged at the Registry of the General Court on 6 November 2009, Simba Toys brought an action seeking annulment of the decision at issue.

In support of its action, it relied on eight pleas in law, alleging infringement of the first sentence of Article 75 and of the first sentence of Article 76(1) of Regulation No 207/2009, and infringement of Article 7(1)(b), Article 7(1)(c), Article 7(1)(e)(i) to (iii) and Article 7(3) of Regulation No 40/94.

By the judgment under appeal, the General Court dismissed that action as unfounded.

Forms of order sought

Simba Toys claims that the Court should:

set aside the judgment under appeal;
annul the decision at issue; and
order Seven Towns and EUIPO to pay the costs.

Seven Towns and EUIPO contend that the Court should:

dismiss the appeal; and

order Simba Toys to pay the costs.

The request for the reopening of the oral part of the procedure

By letter of 7 July 2016, Seven Towns requested the reopening of the oral part of the procedure.

That company claims, in essence, that the Advocate General, in his Opinion, relied on facts and raised arguments which had not been debated between the parties or before the General Court or the Court of Justice, so far as concerns, inter alia, the definition of the function of the goods at issue, the identification of the essential characteristics of the sign and the assessment of the functionality of the shape of a cube.

It that respect, it must be recalled that the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure under Article 83 of its Rules of Procedure, in particular if it considers that it lacks sufficient information or where the case must be decided on the basis of an argument which has not been debated between the interested parties (see, to that effect, judgment of 7 April 2016,