

GERMANY

General Court rules in bingo trade mark case

Maiwald Patentanwalts GmbH
Munich



Stephan N Schneller

In *ZITRO IP Sàrl v Office for Harmonization in the Internal Market (OHIM)* (case T-665/13, January 29, 2015), the General Court agreed with the Board of Appeal of OHIM that the figurative mark Spin Bingo was not similar to the earlier Community word mark Zitro Spin Bingo, thus, rejecting the opposition under Article 42(5) Community Trade-mark Regulation 207/2009 (CTMR).

Gamepoint BV filed an application for a figurative Community trade mark for goods and services in classes 9, 41 and 42, inter alia, for “scientific, nautical, surveying, weighing, measuring, checking (supervision) apparatus and instruments; apparatus and instruments for regulation and management of electricity; scientific and technological services and research and design relating thereto; industrial analysis and research services” (see illustration).



ZITRO IP Sàrl filed an opposition based on its earlier Community word mark Zitro Spin Bingo, which also covers corresponding goods and services in classes 9 and 41. The opposition was based on Article 8(1)(b) CTMR alleging likelihood of confusion between the respective marks.

The Opposition Division of OHIM upheld the opposition in respect of the mentioned goods and services finding the respective marks confusingly similar. Following the appeal by Gamepoint pursuant to Articles 58 to 64 CTMR the Fourth Board of Appeal of OHIM annulled that decision and rejected the opposition in its entirety. The Appeal Board

held that there was a low degree of visual, oral and conceptual similarity between the signs, despite the identical word part “Spin Bingo”. It was considered that this expression was purely descriptive for the relevant goods and services. It noted that the word “Bingo” was a commonly known game, and in combination with the English word “Spin” which refers to movement of rotation, the addressed public would perceive the expression as a specific version of the game of bingo. The latter would be equally supported by the figurative element with the appearance of a reel which further characterises the game as a possible specific version of bingo. Thus, the word “Zitro” is to be held dominant in the earlier mark, and finds no similarity in the contested mark.

While Gamepoint then filed an action before the General Court under Article 65 CTMR, alleging that the Board of Appeal had infringed Articles 42(2) and 8(1)(b) CTMR, the General Court fully upheld the reasoning of the Board of Appeal and, thus, dismissed the action of Zitro IP Sàrl. This decision is not yet final.