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DECISION • TRADE MARK LAW

European Union

"Majtczak v. Feng Shen Technology and OHIM"

Council Regulation (EC) No. 40/94 of 20 December 1993 on the Community Trade Mark, Art. 51(1)(b) – *Jarosław Majtczak v. Feng Shen Technology Co. Ltd and Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*

Decision of the European Court of Justice (Tenth Chamber) 7 February 2013 – Case No. C-266/12 P

1. **In accordance with the judgment in the *Chocoladenfabriken Lindt & Sprüngli* case, bad faith on the part of an applicant for registration of a Community trade mark, within the meaning of Article 51(1)(b) of Regulation No 40/94, must be assessed globally, taking into account all factors relevant to the circumstances of the case. The factors which should be taken into account include the fact that the applicant knows or must know that a third party is using, in at least one Member State, an identical or similar sign for an identical or similar product.**
2. **The purpose of an action before the General Court is to review the legality of decisions of the Boards of Appeal for the purposes of Article 63 of Regulation No 49/94 and the legality of the contested measure must be assessed on the basis of the elements of fact and of law existing at the time the measure was adopted, since the General Court's function is not to re-evaluate the factual circumstances in the light of evidence which has been adduced for the first time before it.**

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