

**Judgment of the General Court of 21 January 2014 — Wilmar Trading v OHIM — Agroekola (ULTRA CHOCO)**

(Case T-232/12) <sup>(1)</sup>

*(Community trade mark — Opposition proceedings — Application for Community word mark ULTRA CHOCO — Earlier national word mark ultra choco — Unregistered earlier mark ULTRA CHOCO used in the course of trade in the European Union and in Bulgaria — Article 60 of Regulation (EC) No 207/2009 — Failure to comply with the obligation to pay appeal fee within the time-limit — Decision of the Board of Appeal declaring the appeal deemed not to have been filed)*

(2014/C 61/14)

Language of the case: English

**Parties**

*Applicant:* Wilmar Trading Pte Ltd (Singapore, Singapore) (represented by: E. Miller, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: C. Negro and D. Botis, acting as Agents)

*Other party to the proceedings before the Board of Appeal of OHIM:* Agroekola EOOD (Sofia, Bulgaria)

**Re:**

Action brought against the decision of the First Board of Appeal of OHIM of 27 March 2012 (Case R 87/2012-1), relating to opposition proceedings between Wilmar Trading Pte Ltd and Agroekola EOOD.

**Operative part of the judgment**

*The Court:*

1. Dismisses the action.
2. Orders Wilmar Trading Pte Ltd to pay the costs.

<sup>(1)</sup> OJ C 243, 11.8.2012.

**Action brought on 29 November 2013 — Eycharis Nezi v OHIM — Etam (E)**

(Case T-645/13)

(2014/C 61/15)

Language in which the application was lodged: Greek

**Parties**

*Applicant:* Eycharis Nezi (Mykonos, Greece) (represented by: A Salkitzoglou, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Etam SAS (Clichy, France)

**Form of order sought**

The applicant claims that the General 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 3 October 2013 in Case R 329/2013-4;

— vary the above decision so that the applicant's mark is registered for all the goods and service which were applied for and,

— order the opponent to pay all the applicant's legal costs, including all costs of any interveners.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant.

*Community trade mark concerned:* The figurative mark 'E', for goods and services in Classes 14, 16, 18, 25, 26, 35 and 40 — Community trade mark application No 8701138.

*Proprietor of the mark or sign cited in the opposition proceedings:* The opponent before the Board of Appeal.

*Mark or sign cited in opposition:* The Community figurative mark 'E', for goods in Classes 3, 18 and 25.

*Decision of the Opposition Division:* Rejection of the opposition.

*Decision of the Board of Appeal:* Partial annulment of the decision of the Opposition Division.

*Pleas in law:*

— Infringement of the Treaty on the Functioning of the European Union;

— Infringement of Article 4 of Regulation No 207/2009;

- Infringement of Article 8(1)(b) and (5) of Regulation No 207/2009;
- Infringement of Article 76 of Regulation No 207/2009, and
- Infringement of Articles 15 and 42 of Regulation No 207/2009.

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**Action brought on 3 December 2013 — IOIP Holdings v OHIM (GLISTEN)**

**(Case T-648/13)**

(2014/C 61/16)

*Language of the case: English*

**Parties**

*Applicant:* IOIP Holdings LLC (Fort Wayne, United States of America) (represented by: H. Dhondt and S. Kinart, lawyers)

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

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 11 September 2013 given in Case R 1028/2013-2;
- Order the Office to register the Community trade mark applied for;
- Order the defendant to bear the costs of proceedings.

**Pleas in law and main arguments**

*Community trade mark concerned:* The word mark 'GLISTEN' for goods in Class 3 — Community trade mark application No 11 305 273

*Decision of the Examiner:* Rejected the application

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 7(1)(b) and (c) CTMR

**Action brought on 12 December 2013 — Time v OHIM (InStyle)**

**(Case T-651/13)**

(2014/C 61/17)

*Language of the case: English*

**Parties**

*Applicant:* Time Inc. (New York, United States) (represented by: D. Cañadas Arcas, lawyer)

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

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 20 September 2013 given in Case R 827/2013-2;
- Order the defendant to bear the costs of proceedings, including the costs of the appeal proceeding incurred before the Office.

**Pleas in law and main arguments**

*Community trade mark concerned:* The figurative trade mark for goods and services in Classes 9, 16 and 41 — Community trade mark application No 11 264 223

*Decision of the Examiner:* Rejected partially the application

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 7(1)(b) and (c) and Article 7(2) CTMR.

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**Action brought on 10 December 2013 — The Smiley Company v OHIM (Shape of a cookie)**

**(Case T-656/13)**

(2014/C 61/18)

*Language of the case: English*

**Parties**

*Applicant:* The Smiley Company SPRL (Brussels, Belgium) (represented by: A. Freitag, lawyer)