

*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 Fourth Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 8 October 2013 given in Case R 997/2013-4;

— Order the defendant to bear the costs of proceedings.

### Pleas in law and main arguments

*Community trade mark concerned:* The three-dimensional trade mark representing a shape of a cookie with a smiling face for goods in Classes 29 and 30 — Community trade mark application No 11 133 683

*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) CTMR

### Action brought on 11 December 2013 — BH Stores v OHIM — Alex Toys (ALEX)

(Case T-657/13)

(2014/C 61/19)

*Language in which the application was lodged:* English

### Parties

*Applicant:* BH Stores BV (Curaçao) (represented by: T. Dolde and M. Hawkins, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Alex Toys LLC (Greenwich, United States of America)

### 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 16 September 2013 given in Case R 1950/2012-2;

— Order the defendant to bear the costs of proceedings.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* The other party to the proceedings before the Board of Appeal

*Community trade mark concerned:* The word mark 'ALEX' for goods in Classes 16, 20, and 28 — Community trade mark application No 6 540 173

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

*Mark or sign cited in opposition:* The German trade mark registration Nos 1 049 274 and 648 968 for the word mark 'ALEX' and the German trade mark registration No 39 925 705 for the figurative mark containing the verbal element 'ALEX' for goods in Class 28

*Decision of the Opposition Division:* Rejected the opposition

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

*Pleas in law:* Infringement of Articles 75 and 8(1)(b) CTMR

### Appeal brought on 10 December 2013 by BP against the judgment of the Civil Service Tribunal of 30 September 2013 in Case F-38/12 BP v FRA

(Case T-658/13 P)

(2014/C 61/20)

*Language of the case:* English

### Parties

*Appellant:* BP (Barcelona, Spain) (represented by: L. Levi and M. Vandenbussche, lawyers)

*Other party to the proceedings:* European Union Agency for Fundamental Rights (FRA)

### Form of order sought by the appellant

The appellant claims that the Court should:

— Set aside the Civil Service Tribunal's judgment of 30 September 2013 in case F-38/12;

— Consequently, annul the decision not to renew the appellant's contract and to transfer her to another department, dated 27 February 2012; order the defendant to compensate the appellant's material prejudice estimated at 1 320 euros per month from September 2012, to which must be added late interest at the key rate of the European Central Bank plus two percentage points; and order the defendant to compensate the appellant's moral prejudice evaluated *ex aequo et bono* at 50 000 euros; and

— Order the defendant to pay the costs in the first instance and appeal.

### Pleas in law and main arguments

In support of the appeal, the appellant relies on the following pleas in law.

#### 1. Regarding the decision of non-renewal of the appellant's contract

— Firstly, the appellant alleges that the Civil Service Tribunal violated the principle of the rights of defence and the right to be heard and of access to relevant information embodied in Article 41 of the EU Charter of Fundamental Rights and it distorted the evidence;

— Secondly, the appellant alleges that by refusing to authorise a second exchange of pleadings and the production of relevant evidence in response to the observations of the defendant and at the hearing, the Civil Service Tribunal violated the appellant's rights of defence, committed a manifest error of assessment and denied to the appellant a fair trial;

— Thirdly, the appellant alleges a manifest error made by the Civil Service Tribunal in the assessment of the first plea alleging a manifest error of assessment in the decision of the defendant and distortion of the facts and evidence;

— Fourthly, the appellant alleges a manifest error in the assessment of the pleas on retaliation and misuse of powers, distortion of the facts and evidence.

#### 2. Regarding the decision of reassignment

— Firstly, the appellant alleges an illegal assessment by the Civil Service Tribunal of the second plea, alleging irregular and unilateral amendment of an essential element of the contract of service and a discrepancy between post and grade, and a distortion of evidence;

— Secondly, the appellant alleges that the Civil Service Tribunal erred in law in the assessment of the appellant's

argument in relation to the absence of hearing by the defendant before the decision to transfer and a violation of the rights of defence.

#### 3. The appellant alleges a violation of Article 87(2) and 88 of the Rules of Procedure of the civil Service Tribunal regarding the costs, and a violation of the duty to state reasons.

### Action brought on 12 December 2013 — *dm-drogerie markt v OHIM — Diseños Mireia (D and M)*

(Case T-662/13)

(2014/C 61/21)

*Language in which the application was lodged: English*

### Parties

*Applicant:* *dm-drogerie markt GmbH & Co. KG* (Karlsruhe, Germany) (represented by: O. Bludovsky and C. Mellein, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* *Diseños Mireia, SL* (Barcelona, Spain)

### Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 11 September 2013 given in Case R 911/2012-1 and cancel the contested trade mark;

— Alternatively: Annul the decision of the First Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 11 September 2013 given in Case R 911/2012-1 and remit the case;

— Alternatively: Annul the decision of the First Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 11 September 2013 given in Case R 911/2012-1.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* The other party to the proceedings before the Board of Appeal