

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

*Other party to the proceedings before the Board of Appeal:* Miguel Torres, SA (Vilafranca del Penedès, Spain)

### **Details of the proceedings before OHIM**

*Applicant of the trade mark at issue:* Applicant

*Trade mark at issue:* Community figurative mark containing the word elements ‘SOTTO IL SOLE ITALIANO SOTTO il SOLE’  
— Application for registration No 9 784 539

*Procedure before OHIM:* Opposition proceedings

*Contested decision:* Decision of the Second Board of Appeal of OHIM of 3 September 2015 in Case R 356/2015-2

### **Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order OHIM to pay the costs.

### **Plea in law**

- Infringement of Articles 8(5), 64(1) and 8(1)(b) of Regulation No 207/2009.

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## **Action brought on 18 November 2015 — Jema Energy v European Joint Undertaking Fusion for Energy**

**(Case T-668/15)**

(2016/C 027/90)

*Language of the case:* Spanish

### **Parties**

*Applicant:* Jema Energy, S.A. (Lasarte-Oria, Spain) (represented by: N. Rey Rey, lawyer)

*Defendant:* European Joint Undertaking for ITER and the Development of Fusion Energy

### **Form of order sought**

The applicant claims that the Court should:

- Annul the defendant’s decision to reject the bid of the applicant, Jema Energy, and
- Order the defendant to pay the costs.

### **Pleas in law and main arguments**

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, relating to the clarity of the rules applied to the procedure and alleging infringement of the principles of legal certainty and transparency
  - The applicant claims in that respect that the tender specifications in the present procedure contain vague and imprecise concepts, for which the applicant was obliged to request several clarifications from the defendant. The applicant submitted very clear questions, leaving no room for doubt. From the outset, F4E provided very ambiguous and sparsely-worded replies.

- Given the ambiguity of the selection criteria in the procedure and F4E's conduct in response to the applicant's question and actions, the applicant submits that the principles of legal certainty and transparency have been infringed.
2. Second plea in law, alleging infringement of the principles of equal treatment and equal opportunities between candidates during the procedure
- The applicant claims in that respect that one of the documents that the defendant sent to the applicant at the beginning of the procedure expressly states that if the examples submitted did not fulfil the technical requirements, the bidder would be permitted to present new examples in order to fully meet those requirements. At no point was the applicant advised that it had not fulfilled the requirements, with the result that it never had the opportunity to present other examples. Nonetheless, the reasons that the defendant has given to disqualify JEMA from the tender procedure is that its examples did not fulfil the requirements.
3. Third plea in law, alleging infringement of the principle of proportionality and the artificial restriction of competition
- The applicant claims in that respect that the selection criteria are too strict. F4E requested a reference that fulfils a combination of three requirements (power, voltage and current) which is unnecessary and disproportionate to the needs of the project. In addition, it has requested that a power supply project from the last five years be submitted by way of reference, which is another disproportionate criterion, since undertakings that might have references which fulfil those criteria are manufacturers of frequency inverters for high power motors. Those are typically large undertakings, thereby discouraging the participation of small and medium undertakings.

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**Action brought on 20 November 2015 — Osho Lotus Commune v OHIM — Osho International Foundation (OSHO)**

**(Case T-670/15)**

(2016/C 027/91)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Osho Lotus Commune e.V. (Cologne, Germany) (represented by: M. Viefhues, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Osho International Foundation (Zurich, Switzerland)

**Details of the proceedings before OHIM**

*Proprietor of the trade mark at issue:* Other party to the proceedings before the Board of Appeal

*Trade mark at issue:* Community word mark 'OSHO' — Application for registration No 1 224 831

*Procedure before OHIM:* Proceedings for a declaration of invalidity

*Contested decision:* Decision of the Fourth Board of Appeal of OHIM of 22 September 2015 in Case R 1997/2014-4