

In connection with the corrections in the area of direct aid (arable crops), the applicant maintains, first, that: (a) there was no valid legal basis for applying the old guidelines, which laid down fixed percentages for the application of corrections to the new common agricultural policy (CAP), to the new single payment scheme and (b) their application seriously infringes the principle of proportionality.

The applicant maintains, secondly, that the Commission made an erroneous assessment of the facts: (a) in relation to the alleged weakness of the LPIS-GIS, (b) in relation to the fact that if a comparison is made of information from the LPIS-GIS which was used for the claim year 2007 with the information from the complete and reliable 2009 LPIS-GIS, which the Commission checked by an on-the-spot inspection, it is clear that the differences and deficiencies are minimal and do not exceed 2 % and, accordingly, any correction should not exceed that percentage and (c) in relation to the alleged weaknesses in management checks, cross-checks and on-the-spot checks and their quality and in particular the alleged failure to measure grazing land and the alleged lateness in carrying out on-the-spot checks, since the multiplicity of improvements made in the 2007 claim year should lead the Commission to the conclusion that no correction is necessary.

Lastly, the applicant claims that there was an erroneous interpretation and application of Article 33 of Regulation 1290/05<sup>(1)</sup> in relation to the correction to expenditure on rural development measures.

<sup>(1)</sup> Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy

### Action brought on 9 June 2011 — Duscholux Ibérica v OHIM — Duschprodukter i Skandinavien (duschy)

(Case T-295/11)

(2011/C 238/45)

*Language in which the application was lodged: English*

#### Parties

*Applicant:* Duscholux Ibérica, SA (Barcelona, Spain) (represented by: J. Carbonell Callicó, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Duschprodukter i Skandinavien AB (Hisings Backa, Sweden)

#### Form of order sought

— Modify the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 March 2011 in case R 662/2010-1;

— Subordinately, and only in the case the former claim would be rejected, annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 March 2011 in case R 662/2010-1;

— Order the defendant and the other party to the proceedings before the Board of Appeal to pay the costs.

#### 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 international figurative mark 'duschy', for goods in classes 11 and 20 — Community trade mark application No W927073

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

*Mark or sign cited in opposition:* Community trade mark registration No 2116820, of the figurative mark 'DUSCHO Harmony', for goods in classes 6, 11 and 19

*Decision of the Opposition Division:* Partially upheld the opposition

*Decision of the Board of Appeal:* Annulled the contested decision

*Pleas in law:* Infringement of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, related to the right to fair trial; infringement of Articles 75 and 76 of Council Regulation No 207/2009, because the Board of Appeal disregarded facts and evidences that were submitted in due time by the applicant; and, infringement of Article 8(1)(b) of Council Regulation No 207/2009, because the Board of Appeal wrongly found that there was no risk of confusion between the conflicting trademarks.

### Action brought on 8 June 2011 — Cementos Portland Valderrivas v Commission

(Case T-296/11)

(2011/C 238/46)

*Language of the case: Spanish*

#### Parties

*Applicant:* Cementos Portland Valderrivas, SA (Pamplona, Spain) (represented by: L. Ortiz Blanco, lawyer)

*Defendant:* European Commission

#### Form of order sought

The applicant claims that the General Court should:

— declare the action admissible;

— annul the Commission's decision of 30 March 2011;

— order the Commission to pay the costs.

#### Pleas in law and main arguments

The action has been brought against the Commission's decision of 30 March 2011 in proceedings pursuant to Article 18(3) of Council Regulation (EC) No 1/2003, adopted in relation to Case COMP/39.520 — Cement and related products.

In support of its action, the applicant relies on a single plea of nullity, alleging an infringement of Article 18 of Regulation No 1/2003 and the principle of proportionality.

- First, the applicant submits that the information requested in the contested decision bears no relation to the infringement under investigation and, as such, cannot assist the Commission in its task of verifying any evidence which justifies the investigation in relation to Valderrivas. Consequently, the applicant claims that the requirement of necessity to which requests for information are subject by way of Article 18 of Regulation No 1/2003 is not satisfied. Moreover, the applicant submits that the fact that the decision does not contain any references to such evidence cannot prevent the General Court from carrying out its task of reviewing the requirement of necessity.
- Second, the applicant alleges that the contested decision infringes the principle of proportionality in that it imposes on it a disproportionate burden in relation to the requirements of the investigation. The disproportionate nature of the decision is reflected in the excessive scope of the information requested, the high level of detail required, the requirement to process and submit the requested information in the stated formats and within the time limit set out to that effect.

**Action brought on 31 May 2011 — Ghost Brand v OHIM — Procter & Gamble International Operations (GHOST)**

(Case T-298/11)

(2011/C 238/47)

*Language in which the application was lodged: English*

#### Parties

*Applicant:* Ghost Brand Ltd (London, United Kingdom) (represented by: N. Caddick, QC)

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

*The Appellant to the proceedings before the Board of Appeal:* Procter & Gamble International Operations SA (Geneva, Switzerland)

#### Form of order sought

- Order that transfer of ownership in respect of Community Trade Mark Registration No 000282350 'GHOST' to Procter & Gamble International Operations S.A. should be recorded and published only in respect of 'cosmetics', and that ownership of the registration in relation to all goods in class 25, and 'soaps, perfumery, essential oils, hair lotions' in class 3 should remain in the name of Ghost Brand Limited.

#### Pleas in law and main arguments

*Registered Community trade mark in respect of which an application for transfer of ownership has been made:* The word mark 'GHOST', for goods in class 3 ('soaps, perfumery, essential oils, cosmetics, hair lotions') — Community trade mark registration No 282350

*Proprietor of the Community trade mark:* The applicant

*Party applying for the transfer of ownership of the Community trade mark:* The Appellant to the proceedings before the Board of Appeal

*Decision of the Department for Designs and Register:* Rejected the application for a partial transfer of ownership

*Decision of the Board of Appeal:* Annulled the contested decision and decided that the Department for Designs and Register shall record and publish the transfer of ownership

*Pleas in law:* The applicant advances three pleas in law, mainly that: (i) the Second Board of Appeal erred in not notifying the applicant of the appeal proceedings, or the appeal decision; (ii) the Second Board of Appeal was not provided with all of the necessary information, and the appellant's appeal was based on deception; and, (iii) the appellant acted in bad faith in appealing the decision of the Office for Harmonisation in the Internal Market.

**Action brought on 10 June 2011 — Otto v OHIM — Nalsani (TOTTO)**

(Case T-300/11)

(2011/C 238/48)

*Language in which the application was lodged: German*

#### Parties

*Applicant:* Otto GmbH & Co. KG (Hamburg, Germany) (represented by: P. Schäuble and S. Müller, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Nalsani, SA (Bogota, Colombia)

#### Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 March 2011 in Case R 1291/2010-2;

- Order the defendant to pay the costs.

#### Pleas in law and main arguments

*Applicant for a Community trade mark:* Nalsani, SA

*Community trade mark concerned:* the figurative mark 'TOTTO' for goods in Classes 3, 9, 14, 18 and 25 — application No 6 212 451

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

*Mark or sign cited in opposition:* the national figurative mark 'OTTO' for goods in Classes 3, 9, 14, 18 and 25

*Decision of the Opposition Division:* the opposition was upheld