

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Lidl Stiftung & Co. KG (Neckarsulm, Germany)

### Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 5 October 2010 in Case R 1229/2009-4;

— Order OHIM to pay the costs.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* the applicant

*Community trade mark concerned:* the figurative mark containing the word element 'VITAL&FIT' for goods in Class 32

*Proprietor of the mark or sign cited in the opposition proceedings:* Lidl Stiftung & Co. KG

*Mark or sign cited in opposition:* five earlier rights, including the national word mark 'VITAFIT' for goods in Class 32

*Decision of the Opposition Division:* opposition upheld

*Decision of the Board of Appeal:* appeal dismissed

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 <sup>(1)</sup>, as the marks at issue are not so similar that there is a likelihood of confusion, and infringement of rules of procedure in that the Board of Appeal did not itself examine the supposed aural similarity of the marks, did not take account of decisions of OHIM and of the Court, to which the parties referred, did not have regard to those decisions and did not make it clear whether it did in fact take into account only German commercial circles and their views

<sup>(1)</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

**Action brought on 29 November 2010 — Biodes v OHIM — Manasul Internacional (FARMASUL)**

(Case T-553/10)

(2011/C 30/94)

*Language in which the application was lodged:* Spanish

### Parties

*Applicant:* Biodes S.L. (Madrid, Spain) (represented by: E. Manresa Medina, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Manasul Internacional S.L. (Ponferrada, Spain)

### Form of order sought

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 September 2010 in Case R 1034/2009-1, and

— order the defendant and any interveners to pay all the costs of the proceedings.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* Figurative mark 'FARMASUL' for goods in Classes 5, 30 and 31.

*Proprietor of the mark or sign cited in the opposition proceedings:* Manasul Internacional S.L.

*Mark or sign cited in opposition:* National figurative marks 'MANASUL' and 'MANASUL ORO' for goods in Classes 5, 30 and 31.

*Decision of the Opposition Division:* Opposition rejected and mark applied for granted.

*Decision of the Board of Appeal:* Appeal upheld and mark applied for refused.

*Pleas in law:* Infringement of Article 8(1)(b) and (5) of Regulation (EC) No 207/2009 <sup>(1)</sup> since there is no similarity between the marks at issue, that the opponent has forgotten to examine the second licence agreement which amended the first licence agreement, and that the opposing mark's alleged reputation is nonexistent.

<sup>(1)</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).