

2. Second plea: infringement of the applicant's fundamental right to respect for property.

- The applicant submits in this regard that its inclusion in Annex VIII to the contested regulation constitutes an unjustified interference with its fundamental right to property, since it is not apparent from the insufficient reasoning provided by the Council why it was included on the list of persons sanctioned under Article 16(2) of the contested regulation.
- Next, the applicant submits that its inclusion in Annex VIII to the contested regulation is based on an obvious erroneous assessment of its situation and of its activities on the part of the Council.
- Finally, the applicant submits in the context of its second plea that its inclusion in Annex VIII to the contested regulation is incompatible with the aims pursued by the regulation and that it constitutes a disproportionate interference with its property rights.

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**Action brought on 13 December 2010 — Bimbo v OHIM — Panrico (BIMBO DOUGHNUTS)**

(Case T-569/10)

(2011/C 46/29)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Bimbo, 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:* Panrico, SL (Barcelona, Spain)

**Form of order sought**

- Modify the decision of the Fourth Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 7 October 2010 in case R 838/2009-4 and grant the Community trade mark application No 5096847;
- In the alternative, annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 October 2010 in case R 838/2009-4; and
- Order the defendant and the other party to the proceedings to pay the costs of the proceedings.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'BIMBO DOUGHNUTS', for goods in class 30 — Community trade mark application No 5096847

*Proprietor of the mark or sign cited in the opposition proceedings:* The other party to the proceedings before the Board of Appeal

*Mark or sign cited in opposition:* Spanish trade mark registration No 399563 of the word mark 'DONUT' for goods in class 30; Spanish trade mark registration No 643273 of the figurative mark 'donuts' for goods in class 30; Spanish trade mark registration No 1288926 of the word mark 'DOGHNUTS' for goods in class 30; Spanish trade mark registration No 2518530 of the figurative mark 'donuts' for goods in class 30; Portuguese trade mark registration No 316988 of the word mark 'DONUTS' for goods in class 30; International trade mark registration No 355753 of the word mark 'DONUT' for goods in class 30; International trade mark registration No 814272 of the figurative trade mark 'donuts' for goods in class 30

*Decision of the Opposition Division:* Upheld the opposition

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

*Pleas in law:* The applicant considers that the contested decision infringes Articles 75 and 76 of Council Regulation (EC) No 207/2009, as the Board of Appeal disregarded facts and evidences that were submitted in due time by the parties, and that the contested decision infringes Article 8(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal erred in its assessment of likelihood of confusion.

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