

## GENERAL COURT

**Action brought on 17 June 2011 — Fercal — Consultadoria e Serviços v OHIM — Parfums Rochas (PATRIZIA ROCHA)**

(Case T-360/11)

(2011/C 298/34)

*Language in which the application was lodged: Portuguese*

### Parties

*Applicant:* Fercal — Consultadoria e Serviços Lda (Lisbon, Portugal) (represented by: António J. Rodrigues, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Parfums Rochas SAS

### Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of OHIM notified on 21 April 2011 (Case R 2355/2010-2) in the cancellation proceedings Patrizia Rocha/Rochas and, therefore, adjudicate upon the appeal against the decision of 27 September 2010 in the opposition B-001559361.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* PATRIZIA ROCHA

*Proprietor of the mark or sign cited in the opposition proceedings:* Parfums Rochas SAS

*Mark or sign cited in opposition:* 'ROCHAS'

*Decision of the Opposition Division:* Opposition upheld.

*Decision of the Board of Appeal:* Appeal dismissed as inadmissible.

*Pleas in law:* The time-limit for filing an appeal expired on 28 January 2011.

The applicant sent a notice of appeal by post on 27 January 2011, the day before the last day of the time-limit.

**Action brought on 22 July 2011 — ultra air v OHIM — Donaldson Filtration Deutschland (ultrafilter international)**

(Case T-396/11)

(2011/C 298/35)

*Language in which the application was lodged: German*

### Parties

*Applicant:* ultra air GmbH (Hilden, Germany) (represented by: C. König, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Donaldson Filtration Deutschland GmbH (Haan, Germany)

### Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 18 May 2011, notified on 20 May 2011, in Case R 374/2010-4;
- Reject the objection lodged on 16 March 2010 by Donaldson Filtration Deutschland GmbH against the decision of the Cancellation Division of OHIM of 29 January 2010 in cancellation proceedings No 2880 C;
- Order OHIM and Donaldson Filtration Deutschland GmbH, should it intervene in the present case, to pay the costs.

### Pleas in law and main arguments

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* the word mark 'ultrafilter international' for goods and services in Classes 7, 11, 37, 41 and 42 — Community trade mark No 1 121 839

*Proprietor of the Community trade mark:* Donaldson Filtration Deutschland GmbH

*Applicant for the declaration of invalidity of the Community trade mark:* the applicant

*Grounds for the application for a declaration of invalidity:* the application is based on absolute grounds for invalidity pursuant to Article 52(1)(a) in conjunction with Article 7(1)(b) and (c) and (3) of Regulation No 207/2009 as the contested word mark is descriptive

*Decision of the Cancellation Division:* the application for a declaration of invalidity was granted

*Decision of the Board of Appeal:* the Cancellation Division's decision was annulled and the application for a declaration of invalidity was rejected