

Action brought on 19 March 2012 — ActionSportGames v OHIM

(Case T-122/12)

(2012/C 165/39)

*Language in which the application was lodged: Danish***Parties***Applicant:* ActionSportGames A/S (Humblebæk, Denmark) (represented by: W. Rebernik, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*Other party to the proceedings before the Board of Appeal:* FN Herstal SA (Herstal, Belgium)**Form of order sought**

— Annul the defendant's decision of 12 January 2012 in Case R 2096/2010-1;

— Uphold the decision of the Opposition Division of 24 September 2010 (Case No B 1 344 904);

— Order the defendant to pay the costs.

Pleas in law and main arguments*Applicant for a Community trade mark:* ActionSportGames A/S*Community trade mark concerned:* Word mark 'SCAR' for goods in Class 28 in Community trade mark application No 5 750 054.*Proprietor of the mark or sign cited in the opposition proceedings:* FN Herstal SA*Mark or sign cited in opposition:* The non-registered Belgian word mark 'SCAR' for goods in Classes 13 and 28.*Decision of the Opposition Division:* Opposition dismissed.*Decision of the Board of Appeal:* Decision of the Opposition Division annulled and case referred back to that division.*Pleas in law:* The applicant claims that there is no likelihood of confusion between the disputed trade marks, since the goods at issue are fundamentally different because FN Herstal's goods are made up of proper firearms for military use, whereas the applicant's goods are replica and toy weapons for sport and play.**Action brought on 22 March 2012 — Free v OHIM — Noble Gaming (FREEEVOLUTION TM)**

(Case T-127/12)

(2012/C 165/40)

*Language in which the application was lodged: French***Parties***Applicant:* Free (Paris, France) (represented by: Y. Coursin, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* Noble Gaming Ltd (Prague, Czech Republic)**Form of order sought**

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 December 2011 in Case R 2326/2010-2;

— hold that the earlier marks relied on and in particular the French word mark FREE No 1734391 are similar to the mark at issue 'FREEEVOLUTION' within the meaning of Article 8(1)(b) and all the more so within the meaning of Article 8(5) of Regulation No 207/2009;

— hold that the application for registration of the mark at issue must be rejected on the basis of Article 8(1)(b) and all the more so in accordance with Article 8(5) of Regulation No 207/2009; and

— order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, both before the General Court and the OHIM.

Pleas in law and main arguments*Applicant for a Community trade mark:* Other party to the proceedings before the Board of Appeal.*Community trade mark concerned:* Figurative mark containing the word element 'FREEEVOLUTION' for goods and services in Classes 9, 41 and 42 — Community trade mark applied for No 8206443.*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant.