

*Mark or sign cited in opposition:* French figurative mark 'free LA LIBERTÉ N'A PAS DE PRIX' No 99785839 for goods and services in Classes 9 and 38; French word mark 'FREE' No 1734391; French word mark 'FREE MOBILE' No 73536224 for goods in Class 9; Trade name 'FREE' used in business in France; domain name 'FREE.FR' used in business.

*Decision of the Opposition Division:* Rejection of the opposition in its entirety.

*Decision of the Board of Appeal:* Dismissal of the appeal.

*Pleas in law:* Infringement of Article 8(1)(b) and Article 8(5) of Regulation No 207/2009 in so far as there is a distinction between how the similarity of the signs should be assessed under each of those provisions; infringement of Article 8(1)(b) of Regulation No 207/2009 in so far as there is indeed a likelihood of confusion with regard to the trade marks at issue; and, infringement of Article 8(5) of Regulation No 207/2009 in so far as there is a link between the marks 'FREE' and 'FREEVOLUTION' such that the mark with a reputation 'FREE' is prejudiced by the existence of the trade mark at issue.

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**Action brought on 23 March 2012 — Spa Monopole v OHIM — Orly International (SPARITUAL)**

(Case T-131/12)

(2012/C 165/41)

*Language in which the application was lodged:* French

**Parties**

*Applicant:* Spa Monopole compagnie fermière de Spa SA/NV (Spa, Belgium) (represented by: L. De Brouwer, E. Cornu and É. De Gryse, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Orly International, Inc (Van Nuys, USA)

**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 9 January 2012 in Case R 2396/2010-1;
- order the defendant 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:* Word mark 'SPARITUAL' for goods in Class 3 — Community trade mark applied for No 3631884

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

*Mark or sign cited in opposition:* Benelux registrations of the word marks 'SPA' and 'Les Thermes de Spa' for goods and services in Classes 3, 32 and 42

*Decision of the Opposition Division:* Rejection of the application for a Community trade mark

*Decision of the Board of Appeal:* Annulment of the contested decision and rejection of the opposition

*Pleas in law:* Infringement of Article 8(5) of Regulation No 207/2009 in the assessment of the reputation of the word mark 'SPA' in Class 32 and infringement of Article 8(5) of Regulation No 207/2009 in the assessment of the likelihood that unfair advantage would be taken of the repute of the mark 'SPA'.

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**Action brought on 23 March 2012 — Scooters India v OHIM — Brandconcern (LAMBRETTA)**

(Case T-132/12)

(2012/C 165/42)

*Language in which the application was lodged:* English

**Parties**

*Applicant:* Scooters India Ltd (Sarojini Nagar, India) (represented by: B. Brandreth, Barrister)

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

*Other party to the proceedings before the Board of Appeal:* Brandconcern BV (Amsterdam, Netherlands)

**Form of order sought**

- Annul the part of the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 January 2012 in case R 2308/2010-1, in which the applicant's appeal against the revocation of the mark in respect of its registration for goods in class 6 and 7 was dismissed; and
- Order the defendant to pay the applicant its costs incurred before the Board of Appeal and the General Court of the European Union.