

— order the defendant to pay the costs of the proceedings.

### **Pleas in law and main arguments**

*Applicant for a Community trade mark:* Applicant

*Community trade mark concerned:* Figurative mark, containing the word elements 'NEW MAX', for goods and services in Classes 3, 5 and 37 — Community trade mark application No 10 106 474

*Proprietor of the mark or sign cited in the opposition proceedings:* Baumarkt Max Bahr GmbH & Co. KG

*Mark or sign cited in opposition:* Figurative mark, containing the word element 'MAX', for services in Class 35

*Decision of the Opposition Division:* Opposition rejected

*Decision of the Board of Appeal:* Annulment of the decision of the Opposition Division and complete rejection of the trade mark applied for

*Pleas in law:* There is no likelihood of confusion between the marks at issue

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### **Action brought on 24 April 2014 — Novomatic v OHIM — Berentzen Mally Marketing plus Services (BLACK JACK TM)**

**(Case T-257/14)**

(2014/C 194/41)

*Language in which the application was lodged:* German

### **Parties**

*Applicant:* Novomatic AG (Gumpoldskirchen, Austria) (represented by: W. Mosing, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Berentzen Mally Marketing plus Services GmbH (Meerbusch, 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 (Trade Marks and Designs) of 18 February 2014 in Case R 329/2012-4 with the consequence that OHIM will have to reject the opposition in its entirety due to lack of similarity of the goods and/or signs and lack of a likelihood of confusion and allow Community trade mark application No 9 456 278 to proceed to registration in accordance with the application;
- Order OHIM and — in the case of written intervention — the opposing party to bear their own costs and to pay the costs incurred by the applicant in the appeal proceedings before the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and in these proceedings.

### **Pleas in law and main arguments**

*Applicant for a Community trade mark:* the applicant

*Community trade mark concerned:* the figurative mark including the word elements 'BLACK JACK TM' for goods and services in Classes 9, 28 and 41 — Community trade mark application No 9 456 278

*Proprietor of the mark or sign cited in the opposition proceedings:* Berentzen Mally Marketing plus Services GmbH

*Mark or sign cited in opposition:* the word and figurative mark 'BLACK TRACK' for goods in Classes 18, 25 and 28

*Decision of the Opposition Division:* the opposition was rejected

*Decision of the Board of Appeal:* the Opposition Division's decision was annulled and the trade mark application was rejected in part

*Pleas in law:* Infringement of Articles 8(1)(b) and 75 of Regulation No 207/2009

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**Action brought on 22 April 2014 — Hansen v OHIM (WIN365)**

**(Case T-264/14)**

(2014/C 194/42)

*Language of the case:* German

**Parties**

*Applicant:* Robert Hansen (Munich, Germany) (represented by M. Pütz-Poulalion, lawyer)

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

**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 (Trade Marks and Designs) of 20 February 2014 in Case R 908/2013-4;
- order OHIM to pay the costs.

**Pleas in law and main arguments**

*Community trade mark concerned:* Word mark WIN365 for goods and services in Classes 9, 35, 36, 38 and 41 — Community trade mark application No 11 513 851

*Decision of the Examiner:* Registration partially refused

*Decision of the Board of Appeal:* Appeal dismissed

*Pleas in law:* Infringement of Article 7(1)(b) of Regulation No 207/2009

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**Action brought on 23 April 2014 — Zehnder Group International v OHIM — Stiebel Eltron (comfotherm)**

**(Case T-267/14)**

(2014/C 194/43)

*Language in which the application was lodged:* German

**Parties**

*Applicant:* Zehnder Group International AG (Gränichen, Switzerland) (represented by: J. Krenzel, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Stiebel Eltron GmbH & Co. KG (Holzminden, Germany)

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of Appeal of 21 February 2014 in Case R 1318/2013-4;
- Order the defendant 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 'comfotherm' for goods in Classes 9 and 11 — Community trade mark No 8 859 472