

**Judgment of the General Court of 16 December 2011 — Rintisch v OHIM — Valfleuri Pâtes alimentaires (PROTIACTIVE)**

(Case T-152/09) <sup>(1)</sup>

*(Community trade mark — Opposition proceedings — Application for Community word mark PROTIACTIVE — Earlier national word and figurative marks PROTIPLUS, PROTI and PROTIPOWER — Late submission of documents — Discretion granted by Article 74(2) of Regulation (EC) No 40/94 (now Article 76(2) of Regulation (EC) No 207/2009) — Concept of a provision to the contrary — Rule 20(1) of Regulation (EC) No 2868/95 — Rule 50(1) of Regulation No 2868/95)*

(2012/C 32/39)

Language of the case: English

**Parties**

*Applicant:* Bernhard Rintisch (Bottrop, Germany) (represented by: A. Dreyer, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent)

*Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court:* Valfleuri Pâtes alimentaires SA (Wittenheim, France) (represented by: F. Baujoin, lawyer)

**Re:**

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 3 February 2009 (Case R 1661/2007-4) relating to opposition proceedings between Bernhard Rintisch and Valfleuri Pâtes alimentaires SA.

**Operative part of the judgment**

The Court:

1. Dismisses the action;
2. Orders Mr Bernhard Rintisch to pay the costs.

<sup>(1)</sup> OJ C 153, 4.7.2009.

**Judgment of the General Court of 15 December 2011 — Mövenpick v OHIM (PASSIONATELY SWISS)**

(Case T-377/09) <sup>(1)</sup>

*(Community trade mark — Application for Community word mark PASSIONATELY SWISS — Absolute grounds for refusal — Geographical indication of origin — Lack of distinctive character)*

(2012/C 32/40)

Language of the case: German

**Parties**

*Applicant:* Mövenpick-Holding (Cham, Switzerland) (represented by: M. Taxhet, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, acting as Agent)

**Re:**

Action brought against the decision of the First Board of Appeal of OHIM of 23 July 2009 (Case R 1457/2008-1) relating to an application for registration of the word mark PASSIONATELY SWISS as a Community trade mark.

**Operative part of the judgment**

The Court:

1. Dismisses the action.
2. Orders Mövenpick Holding to pay the costs.

<sup>(1)</sup> OJ C 282, 21.11.2009.

**Judgment of the General Court of 16 December 2011 — Dashiqiao Sanqiang Refractory Materials v Council**

(Case T-423/09) <sup>(1)</sup>

*(Dumping — Imports of certain magnesia bricks originating in the People's Republic of China — Regulation terminating an interim review — Comparison between the normal value and the export price — Taking into account the value added tax of the country of origin — Application of a different methodology to that used in the initial investigation — Change in circumstances — Articles 2(10)(b) and 11(9) of Regulation (EC) No 384/96 (now Articles 2(10)(b) and 11(9) of Regulation (EC) No 1225/2009)*

(2012/C 32/41)

Language of the case: French

**Parties**

*Applicant:* Dashiqiao Sanqiang Refractory Materials Co. Ltd (Dashiqiao, China) (represented by: J.-F. Bellis and R. Luff, lawyers)

*Defendant:* Council of the European Union (represented by: initially J.-P. Hix and subsequently by J.-P. Hix and B. Driessen, Agents, assisted initially by G. Berrisch and G. Wolf, and subsequently by G. Berrisch, lawyers)

*Intervener in support of the defendant:* European Commission (represented by: É. Gippini Fournier and H. van Vliet, Agents)

**Re:**

Application for annulment of Council Regulation (EC) No 826/2009 of 7 September 2009 amending Regulation (EC) No 1659/2005 imposing a definitive anti-dumping duty on imports of certain magnesia bricks originating in the People's Republic of China (OJ 2009 L 240, p. 7), in so far as the anti-dumping duty it sets in relation to the applicant exceeds that which would be applicable if that duty had been

determined on the basis of the method of calculation applied in the original investigation in order to take account of the fact that Chinese export VAT was not refunded.

### Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Dashiqiao Sanqiang Refractory Materials Co. Ltd to bear its own costs and to pay those incurred by the Council of the European Union;
3. Orders the European Commission to bear its own costs.

(<sup>1</sup>) OJ C 312, 19.12.2009.

### Judgment of the General Court of 13 December 2011 — Goodyear Dunlop Tyres UK v OHIM — Sportfive (QUALIFIER)

(Case T-424/09) (<sup>1</sup>)

*(Community trade mark — Opposition proceedings — Application for Community word mark QUALIFIER — Earlier Community word mark Qualifiers 2006 — Refusal to register — Relative ground for refusal — Likelihood of confusion — article 8(1)(b) of Regulation (EC) No 207/2009)*

(2012/C 32/42)

Language of the case: German

#### Parties

*Applicant:* Goodyear Dunlop Tyres UK Ltd (Birmingham, United Kingdom) (represented by: M. Graf, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: R. Manea, Agent)

*Other party to the proceedings before the Board of Appeal of OHIM:* Sportfive GmbH & Co. KG (Cologne, Germany)

#### Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 11 August 2009 (Case R 1291/2008-4) relating to opposition proceedings between Sportfive GmbH & Co. KG and Goodyear Dunlop Tyres UK Ltd.

### Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Goodyear Dunlop Tyres UK Ltd to pay the costs.

(<sup>1</sup>) OJ C 312, 19.12.2009.

### Judgment of the General Court of 14 December 2011 — Völkl v OHIM — Marker Völkl (VÖLKL)

(Case T-504/09) (<sup>1</sup>)

*(Community trade mark — Opposition proceedings — Application for Community word mark VÖLKL — Earlier international word mark VÖLKL — Relative ground for refusal — Likelihood of confusion — Refusal in part of registration — Article 8(1)(b) of Regulation (EC) No 207/2009 — Genuine use of the earlier mark — Article 42(2) and (3) of Regulation No 207/2009 and Rule 22(3) of Regulation (EC) No 2868/95 — Competence of the Board of Appeal in the case of an appeal limited to part of the goods or services covered by the application for registration — Article 64(1) of Regulation No 207/2009 — Application for variation of the decision of the Board of Appeal — Article 65(3) of Regulation No 207/2009)*

(2012/C 32/43)

Language of the case: German

#### Parties

*Applicant:* Völkl GmbH & Co. KG (Erding, Germany) (represented by: C. Raßmann, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Hanne, Agent)

*Other party to the proceedings before the Board of Appeal of OHIM:* Marker Völkl International GmbH (Baar, Switzerland) (represented by: J. Bauer, lawyer)

#### Re:

Action against the decision of the First Board of Appeal of OHIM of 30 September 2009 (Case R 1387/2008-1) concerning opposition proceedings between Marker Völkl International GmbH and Völkl GmbH & Co. KG.

### Operative part of the judgment

The Court:

1. Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 30 September 2009 (Case R 1387/2008-1);
2. Dismisses the action as to the remainder;
3. Orders OHIM to bear its own costs and pay those incurred by Völkl GmbH & Co. KG;
4. Orders Marker Völkl International GmbH to bear its own costs.

(<sup>1</sup>) OJ C 37, 13.2.2010.