

## GENERAL COURT

**Judgment of the General Court of 25 October 2013 —  
Merlin and Others v OHIM — Dusyma (Game)**

(Case T-231/10) <sup>(1)</sup>

*(Community design — Invalidity proceedings — Registered  
Community design representing a game — Earlier design —  
Grounds for invalidity — Novelty — Individual character —  
Distinction between goods and design — Articles 3, 4, 6 and  
Article 25(1)(b) of Regulation (EC) No 6/2002 )*

(2013/C 359/10)

Language of the case: German

#### Parties

*Applicants:* Merlin Handelsgesellschaft mbH (Forchtenberg, Germany); Rolf Krämer (Forchtenberg); BLS Basteln Lernen Spielen GmbH (Forchtenberg); and Andreas Hohl (Künzelsau, Germany) (represented by: R. Kramer, 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:* Dusyma Kindergartenbedarf GmbH (Schorndorf, Germany) (represented by: A. Zinnecker, lawyer)

#### Re:

Action brought against the decision of the Third Board of Appeal of OHIM of 17 March 2010 (Case R 879/2009-3) relating to invalidity proceedings between Merlin Handelsgesellschaft mbH and Others and Dusyma Kindergartenbedarf GmbH.

#### Operative part of the judgment

*The Court:*

1. Dismisses the action;
2. Orders Merlin Handelsgesellschaft mbH, Mr Rolf Krämer, BLS Basteln Lernen Spielen GmbH and Mr Andreas Hohl to pay the costs.

<sup>(1)</sup> OJ C 209, 31.7.2010.

**Judgment of the General Court of 25 October 2013 —  
Biotronik SE v OHIM — Cardios Sistemas (CARDIO  
MANAGER)**

(Case T-416/11) <sup>(1)</sup>

*(Community trade mark — Opposition proceedings — Appli-  
cation for Community word mark CARDIO MANAGER —  
Earlier national word mark CardioMessenger — Relative  
ground for refusal — No likelihood of confusion — No  
proof of genuine use of the earlier mark — Article 42(2)  
and (3) of Regulation (EC) No 207/2009)*

(2013/C 359/11)

Language of the case: English

#### Parties

*Applicant:* Biotronik SE & Co. KG (Berlin, Germany) (represented by: A. Reich, S. Pietzcker and R. Jacobs, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Cardios Sistemas Comercial e Industrial Ltda (Sao Paulo, Brazil)

#### Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 27 May 2011 (Case R 1156/2010-2) relating to opposition proceedings between Biotronik SE & Co. KG and Cardios Sistemas Comercial e Industrial Ltda.

#### Operative part of the judgment

*The Court:*

1. Dismisses the action;
2. Orders Biotronik SE & Co. KG to pay the costs.

<sup>(1)</sup> OJ C 298, 8.10.2011.