Appeal brought on 7 February 2011 by the Office for Harmonisation in the Internal Market against the judgment of the General Court (Fourth Chamber) delivered on 24 November 2010 in Case T-137/09 *Nike International v OHIM — Muñoz Molina (R 10)*

(Case C-53/11 P)

(2011/C 152/17)

Language of the case: Spanish

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: J. Crespo Carrillo, Agent)

Other parties to the proceedings: Nike International Ltd., Aurelio Muñoz Molina

Form of order sought

— That the Court set aside the judgment under appeal.

— That the Court deliver a fresh judgment on the substance, rejecting the appeal against the contested decision, or refer the case back to the General Court.

— That the Court order the applicant [before the General Court] to pay the costs.

Pleas in law and main arguments

1. **Infringement of Rule 49 of the CTMIR** [1] **and Article 59 of the CTMR** [2]

   The legal basis of the contested decision is Rule 49(1) of the CTMIR, in relation to the current Article 59 of the CTMR. However, the judgment under appeal makes no reference at any point either to Rule 49(1) of the CTMIR or to Article 59 of the CTMR, and makes no ruling on their applicability to the particular case. OHIM considers that that constitutes an error of law and a failure to state sufficient reasons.

2. **Infringement of the OHIM Guidelines and Rule 49(1) of the CTMIR**

   OHIM considers that its Guidelines are not applicable to the particular case. Nevertheless, the judgment under appeal states on two occasions that the Boards of Appeal are obliged to apply the OHIM Guidelines. That constitutes, in OHIM's opinion, an error of law.

[1] Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark
OJ 1995 L 303, p. 1

[2] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark
OJ 1994 L 11, p. 1

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 22 February 2011 — Asociación Nacional de Grandes Empresas de Distribución (ANGED) v Federación de Asociaciones Sindicales (FASGA) and Others

(Case C-78/11)

(2011/C 152/18)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Asociación Nacional de Grandes Empresas de Distribución (ANGED)

Defendants: Federación de Asociaciones Sindicales (FASGA), Federación de Trabajadores Independientes de Comercio (FETICO), Federación Estatal de Trabajadores de Comercio, Hostelería, Turismo y Juego de UGT, Federación del Comercio, Hostelería y Turismo de CC.OO

Question referred

Does Article 7(1) of Directive 2003/88/EC [1] of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time preclude an interpretation of national legislation which does not permit interruption of a period of leave so that the full period — or the remaining period — can be taken at a later time if a worker is temporarily incapacitated when he is on leave?

[1] OJ 2003 L 299, p. 9.

Appeal brought on 25 February 2011 by Fidelio KG against the judgment of the General Court (Third Chamber) delivered on 16 December 2010 in Case T-286/08 Fidelio KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-87/11 P)

(2011/C 152/19)

Language of the case: German

Parties

Appellant: Fidelio KG (represented by: M. Gail, Rechtsanwalt)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)