



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

25 April 2012 *

((Community trade mark — Community word mark BrainLAB — Failure to apply for renewal of the registration of the trade mark — Removal of the trade mark from the register on expiry of registration — Application for restitutio in integrum — Article 81 of Regulation (EC) No 207/2009))

In Case T-326/11,

Brainlab AG, established in Feldkirchen (Germany), represented by J. Bauer, lawyer,

applicant,

v

Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), represented by R. Manea, acting as Agent,

defendant,

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 15 April 2011 (Case R 1596/2010-4), relating to the application for *restitutio in integrum* and to the application for the renewal of the registration of the trade mark BrainLAB made by the applicant,

THE GENERAL COURT (Second Chamber),

composed of N.J. Forwood (Rapporteur), President, F. Dehousse and J. Schwarcz, Judges,

Registrar: E. Coulon,

having regard to the application lodged at the Registry of the General Court on 20 June 2011,

having regard to the response lodged at the Registry of the General Court on 21 September 2011,

having regard to the change in the composition of the Chambers of the General Court,

having regard to the fact that no application for a hearing was submitted by the parties within the period of one month from notification of closure of the written procedure, and having decided, acting upon a report of the Judge-Rapporteur, to give a ruling without an oral procedure, pursuant to Article 135a of the Rules of Procedure of the General Court,

gives the following

* Language of the case: German.

Judgment

Legal context

- 1 Article 46 of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1) provides that Community trade marks are to be registered for a period of 10 years from the date of filing of the application. Registration may be renewed, in accordance with Article 47 of that regulation, for further periods of 10 years.
- 2 Article 47(1) to (3) of Regulation No 207/2009 states that:
 - ‘1. Registration of the Community trade mark shall be renewed at the request of the proprietor of the trade mark or any person expressly authorised by him, provided that the fees have been paid.
 2. The Office shall inform the proprietor of the Community trade mark, and any person having a registered right in respect of the Community trade mark, of the expiry of the registration in good time before the said expiry. Failure to give such information shall not involve the responsibility of the Office.
 3. The request for renewal shall be submitted within a period of six months ending on the last day of the month in which protection ends ...’
- 3 Paragraph (1) of Article 81 of Regulation No 207/2009, entitled ‘*Restitutio in integrum*’, states that:

‘The applicant for or proprietor of a Community trade mark or any other party to proceedings before the Office who, in spite of all due care required by the circumstances having been taken, was unable to comply with a time limit vis-à-vis the Office shall, upon application, have his rights re-established if the obstacle to compliance has the direct consequence, by virtue of the provisions of this Regulation, of causing the loss of any right or means of redress.’
- 4 Rule 29 (entitled ‘Notification of expiry’) of 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) (‘the implementing regulation’) states that:

‘At least six months before expiry of the registration the Office shall inform the proprietor of the Community trade mark, and any person having a registered right, including a licence, in respect of the Community trade mark, that the registration is approaching expiry. Failure to give such notification shall not affect the expiry of the registration.’
- 5 Rule 30(4) of the implementing regulation provides that, where an application for renewal is not submitted, or is submitted after expiry of the period provided for in the third sentence of Article 47(3) of Regulation No 207/2009, the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) is required to determine that the registration has expired and to so notify the proprietor of the Community trade mark.
- 6 Under paragraph (1) of Rule 67 of the implementing regulation, entitled ‘Notification to representatives’:

‘If a representative has been appointed ..., notifications shall be addressed to that appointed ... representative.’

Background to the dispute

- 7 The applicant, Brainlab AG, is the current proprietor of the Community word mark BrainLAB, lodged on 26 August 1999 and registered on 4 December 2000 under number 1290113. A firm of lawyers and patent agents was appointed at the time of that registration to represent the proprietor before OHIM in accordance with Rule 67(1) of the implementing regulation ('the appointed representatives').
- 8 By letter of 2 December 2008, the appointed representatives requested OHIM to register the change of the applicant's address in its database. By notification of 18 February 2009, OHIM confirmed the registration of that change of address to the appointed representatives.
- 9 Meanwhile, on 2 February 2009, OHIM sent a notification under Article 47(2) of Regulation No 207/2009 and Rule 29 of the implementing regulation directly to the applicant, rather than to its appointed representatives. That notification was sent by mistake to the former address of the applicant, informing it of the imminent expiry of the registration of the trade mark in question ('the reminder notification'). That notification indicated, inter alia, that the application for renewal of the registration and the payment of the renewal fees should take place before 31 August 2009 or, in return for the payment of a surcharge, within an additional period expiring on 1 March 2010.
- 10 It is common ground that, despite that error as to the address, the reminder notification was indeed received by the applicant in the days after it had been sent, by virtue of the mail redirection postal service.
- 11 By contrast, the items in the case-file, in particular a declaration on oath by Mr W., the applicant's agent responsible for monitoring the trade mark in question, do not make it possible to establish that that reminder notification was sent by that agent to the appointed representatives. The latter claim that such was not the case. Similarly, in its defence, OHIM points out that there is no evidence that that reminder notification was in fact sent to those appointed representatives. In addition, the reminder notification was subsequently found on the applicant's premises in the file containing the correspondence with its appointed representatives relating to the trade mark in question.
- 12 In any event, no application for renewal of the registration of the trade mark in question was received by OHIM within the period laid down and OHIM for that reason issued a notification pursuant to Rule 30(5) of the implementing regulation declaring that registration of that trade mark had expired on 2 March 2010. That notification was also sent directly to the applicant, but to its new address, on 23 March 2010.
- 13 On 1 April 2010, the appointed representatives informed OHIM that they had known that the reference to their appointment as representatives of the applicant had been removed by error from OHIM's database, without their requesting it. They submitted a new application to be appointed as representatives of the applicant, which was confirmed by an OHIM notification of the same day.
- 14 On 19 May 2010, the appointed representatives submitted to OHIM, on behalf of and for the account of the applicant, an application for renewal of the registration of the trade mark in question and an application for *restitutio in integrum*, within the terms of Article 81 of Regulation No 207/2009, in regard to the period for the filing of the application for renewal of that registration and for payment of the renewal fee.
- 15 By decision of 29 July 2010, the Administration of Trade Marks and Designs and Legal Division of OHIM rejected the application for *restitutio in integrum* on the ground that neither the applicant nor its appointed representatives had displayed the due care required under Article 81(1) of Regulation No 207/2009.

- 16 On 16 August 2010, the applicant appealed to OHIM under Articles 58 to 64 of Regulation No 207/2009 against that decision. The grounds relied upon in support of that appeal were essentially the following:
- the appointed representatives have a system for monitoring the time-limits for renewal of the registration of Community trade marks for which they are responsible, composed of three levels which are independent of one another ('monitoring pillars');
 - the first pillar consists of a warning system by means of preset forms which are filed chronologically, announcing the expiry of the ten-year period for renewal of the registration of the trade marks three months in advance;
 - the second pillar consists of the existence of a register of time-limits for renewal of the registration of trade marks, maintained directly by the lawyer responsible for the monitoring of the trade mark concerned at the premises of the appointed representatives;
 - the third pillar consists of the processing of the reminder notifications sent by OHIM to the appointed representatives in accordance with Rule 29 of the implementing regulation;
 - the two first pillars, which are internal to the chambers of the appointed representatives, did not function in the present case for unexplained reasons, despite the fact that they were handled by diligent and experienced operatives who were subject to regular checks;
 - the third pillar did not function because of an error which was attributable to OHIM, in that the latter addressed the reminder notification to the applicant at its former address and not to its appointed representatives; that error on the part of OHIM ought not to cause any disadvantage to the parties concerned;
 - Mr W., the applicant's agent who received the reminder notification and who is an experienced manager, wished to pass it on to an operative of the appointed representatives, probably by e-mail; however, he no longer recalls whether he did that or whether he sent that notification to a wrong address; the fact remains that that notification was found filed away in the documents relating to the trade mark in question on the applicant's premises, that the appointed representatives did not receive it and that they were therefore not able to react to its sending.
- 17 By decision of 15 April 2011 ('the contested decision'), the Fourth Board of Appeal of OHIM rejected the application for *restitutio in integrum* and ruled that the trade mark in question had expired.
- 18 Contrary to the Administration of Trade Marks and Designs and Legal Division, the Board of Appeal acknowledged, in paragraphs 13 and 20 of the contested decision, that the system of monitoring the time-limits for renewal of the registration of trade marks established by the appointed representatives was correct and proper, that the appointed representatives had normally and correctly carried out their monitoring task, that exceptional errors in their monitoring system could be treated as excusable and that no-one could have foreseen the cumulative malfunctioning of all the precautionary measures put in place.
- 19 However, the Board of Appeal took the view, in paragraphs 14 and 15 of the contested decision, that there was no causal link between the malfunctioning of that system, as noted in the present case, and the non-renewal of the registration of the trade mark in question within the time-limits prescribed. In this case, the cause of that non-renewal was not the malfunctioning of the system of monitoring the time-limits established by the appointed representatives, but rather the absence of instructions given by the applicant relating to the renewal of that registration, which would have been of a 'free and voluntary' nature following its receipt of the reminder notification.

- 20 With regard to that absence of a response, the Board of Appeal first of all pointed out in paragraph 16 of the contested decision that the declaration on oath by Mr W. did not contain his own account of the series of events, particularly in relation to the possible intention or decision of the applicant to renew the registration of the trade mark in question and the contact which may have been made for that purpose with the operative of the appointed representatives.
- 21 The Board of Appeal went on to find in paragraphs 16 to 18 of the contested decision that, even if the appointed representatives had been warned about the imminent expiry of the registration of the trade mark in question by their internal system of monitoring the time-limits or if they had received the reminder notification, they would not have been in a position themselves to carry out renewal of the registration in the absence of instructions to that effect from the applicant. There was therefore no causal link between those events and the non-renewal of the registration of the trade mark in question, the sole cause of that non-renewal being the absence of renewal instructions given by the applicant, even after the applicant had received the reminder notification. The Board of Appeal classified that absence of instructions as being contrary to the duty of due care.
- 22 In paragraph 19 of the contested decision, the Board of Appeal also acknowledged that the reminder notification had indeed been wrongly sent by OHIM directly to the applicant and not to the appointed representatives. However, the Board of Appeal held that, pursuant to Article 47(2) of Regulation No 207/2009, OHIM could not be held responsible in respect of that error. The nature of such a service notification, moreover, means that one cannot rely on its being received.

Forms of order sought

- 23 The applicant claims that the Court should:
- annul the contested decision;
 - refer the case back to the Board of Appeal so that it can decide whether the due care required was observed within the context of renewal of the registration of the trade mark in question;
 - order OHIM to pay the costs.
- 24 OHIM contends that the Court should:
- dismiss the action;
 - order the applicant to pay the costs.

Law

- 25 In support of its appeal, the applicant relies on one single ground, alleging breach of Article 81(1) of Regulation No 207/2009.
- 26 The applicant begins by explaining in detail the system for monitoring the time-limits for renewal of the registration of trade marks which was set up by its appointed representatives. It points out that the Board of Appeal correctly held that that monitoring system was correct and proper, which made the fault committed in the present case by those representatives excusable.
- 27 In reply to the allegations of negligence and inexcusable error upheld by the Board of Appeal against the applicant itself for having failed to give instructions to its appointed representatives after having received the reminder notification, the applicant argues that those representatives ensure its legal

representation, inter alia before OHIM, for all of its 654 national, Community and European trade marks and patents, including 16 Community trade marks. In doing so, they systematically inform it between three months and one month before the expiry of the period for renewal of the registration of each of those trademarks, by requesting it to instruct them to effect that renewal. Until the present case, the applicant had always duly received those reminders and had systematically reacted to them. By contrast, it never received such reminders directly from OHIM, except, precisely, in the present case. The applicant is consequently of the view that it was entitled legitimately to rely on the fact that its appointed representatives would draw its attention to the need to renew registration of the trade mark in question within the normal period of three months. That, it states, was also the reason why it did not react differently to the reminder notification.

- 28 The applicant adds that it is not for the proprietor of a Community trade mark to set up its own system for monitoring time-limits in parallel to that of its professional representatives. On the contrary, only the professional representative's system of monitoring time-limits ought to offer assurance that it functions properly (Case T-136/08 *Aurelia Finance v OHIM (AURELIA)* [2009] ECR II-1361, paragraph 18). That, it submits, was indeed the case here.
- 29 As for the alleged absence of a causal link between the malfunctioning of the system of monitoring the time-limits which was set up by its appointed representatives and the non-renewal in good time of the registration of the trade mark in question (see paragraph 21 above), the applicant stresses the fact that that trade mark coincides with its commercial designation and that that trade mark was once again filed as a Community trade mark on 30 March 2010, that is to say, only one week after the notification relating to its removal from the register of Community trade marks had been sent. The assumption of the Board of Appeal that there is nothing to indicate that the applicant would have given instructions to renew the registration of the trade mark in question if it had been informed by its appointed representatives of its imminent expiry is therefore totally unrealistic. Quite to the contrary, it claims, in case of doubt, its appointed representatives, who represent it in every area of the protection of intellectual property, would have ensured renewal of the registration of the trade mark in question even in the absence of specific instructions to that effect and would have acted differently only in the event of an express instruction not to renew.
- 30 According to OHIM, the appeal is manifestly unfounded.
- 31 As regards its own conduct, OHIM claims that, as set out in Article 47(2) of Regulation No 207/2009 and Rule 29 of the implementing regulation, it is required to inform the proprietor itself of the imminent expiry of the registration of a Community trade mark. Neither of those provisions mentions an obligation to inform any professional representative.
- 32 OHIM also submits that, as set out in the same provisions, it is neither responsible for the fact that the party concerned was not informed nor, *a fortiori*, for 'sending to the wrong address'.
- 33 As regards the question of whether the system for monitoring the time-limits put in place by the appointed representatives displays the due care required by the circumstances, OHIM agrees with the finding of the Board of Appeal that that question is irrelevant in the present case.
- 34 With regard to the alleged lack of due care taken by the applicant itself, OHIM endorses the finding of the Board of Appeal that this was in the present case the determinant reason for exceeding the time-limit for renewal of the registration of the mark in question. The applicant had a period of almost thirteen months to carry out that renewal. During that period, the applicant did not approach OHIM and did not issue any instructions to its appointed representatives, nor did it even contact them, even though it had just been officially warned by the reminder notification that expiry of that registration was imminent. That conduct is incompatible with the due care required by the circumstances, all the more so because the trade mark in question was the applicant's 'house brand' and, for that reason, ought to have received a special level of attention.

- 35 As for the assertion that, if in doubt, the appointed representatives would have renewed the registration of the trade mark in question, even in the absence of instructions from the applicant to that effect (see paragraph 29 above), OHIM considers this to be irrelevant because it is pure conjecture. Moreover, it is at variance with the account set out in paragraph 44 of the application, according to which the mandate of the appointed representatives did not confer on them the right to go ahead with renewal of the registration of a trade mark on their own initiative and without specific instructions from the applicant.
- 36 In that respect, it is apparent from Article 81(1) of Regulation No 207/2009 that *restitutio in integrum* is subject to two requirements, the first being that the party has exercised all due care required by the circumstances, and the second being that the non-observance by the party has the direct consequence of causing the loss of any right or means of redress (see judgment of 15 September 2011 in Case T-271/09 *Prinz Sobieski zu Schwarzenberg v OHIM – British-American Tobacco Polska (Romuald Prinz Sobieski zu Schwarzenberg)*, not published in the ECR, paragraph 53 and the case-law cited).
- 37 It is also apparent from that provision that the requirement to exercise due care lies in the first instance with the proprietor of the trade mark. Thus, if the proprietor delegates administrative tasks relating to renewal of a mark, it must ensure that the person chosen offers the assurance necessary to enable it to be assumed that those tasks will be carried out properly (*AURELIA*, paragraph 14).
- 38 It should also be observed that, since those tasks have been delegated, the person chosen is subject to the requirement to exercise due care just as much as the proprietor. Since that person acts on behalf of and in the name of the proprietor, its actions must be regarded as being the proprietor's actions (*AURELIA*, paragraph 15, and *Romuald Prinz Sobieski zu Schwarzenberg*, paragraph 54).
- 39 In the present case, in light of the events recounted above, the Court finds that the non-renewal of the registration of the trade mark in question within the time-limits prescribed is a result of what the Board of Appeal, following the Administration of Trade Marks and Designs and Legal Division, referred to as a 'sequence of a large number of unfortunate circumstances' (paragraph 20 of the contested decision). It is appropriate to concur unreservedly, in that respect, with the general view taken by the Board of Appeal that '*restitutio in integrum* is properly provided for in such cases'.
- 40 Amongst the 'unfortunate circumstances' in question, three must be considered, as will be explained below, as having contributed conclusively to that non-renewal, namely: (i) the malfunctioning, which remains unexplained, of the first two internal 'monitoring pillars' of the system for monitoring the time-limits which was set up by the appointed representatives; (ii) the untimely and unsolicited removal of the reference to the appointed representatives as representatives of the applicant from OHIM's database (see paragraph 13 above), which itself led to the inaccurate sending of the reminder notification to the applicant, moreover, to its former address, rather than to its appointed representatives; (iii) the confused and inappropriate reaction of Mr W. to that notification, which had the consequence that the appointed representatives did not receive any spontaneous instructions from the applicant to renew the registration.
- 41 As regards the first of those 'unfortunate circumstances', it must be pointed out that, according to the case-law, the words 'all due care required by the circumstances' in Article 81(1) of Regulation No 207/2009 require, in the case of an appeal to a specialised representative, the setting-up of a system of internal control and monitoring of time-limits that generally excludes the involuntary non-observance of time-limits, as laid down in the guidelines relating to proceedings before OHIM. It follows that *restitutio in integrum* may be granted only in the case of exceptional events, which cannot therefore be predicted from experience (*AURELIA*, paragraph 26).
- 42 Those conditions were clearly satisfied in the present case, as is apparent from the findings made by the Board of Appeal and the detailed additional explanations given by the applicant, which are not called into question by OHIM.

- 43 The applicant must therefore be considered to have acted, in principle, with all the due care necessary in the light of the circumstances by appointing, to represent it in its dealings with OHIM, a firm of lawyers and patent agents such as that of its appointed representatives, equipped with a double internal system for monitoring time-limits which OHIM considered to be correct and proper both in the contested decision and in its response.
- 44 The same conclusion must be reached in relation to the appointed representatives, the Board of Appeal having, moreover, acknowledged in paragraph 13 of the contested decision that exceptional errors in their internal system for monitoring the time-limits were excusable.
- 45 With regard to the two other ‘unfortunate circumstances’ mentioned in paragraph 40 above, it is appropriate to point out immediately that the lack of due care which Mr W., the applicant’s agent, may have displayed in not getting into contact with OHIM or with the appointed representatives immediately after having received the reminder notification could have had consequences for the non-renewal of the registration of the trade mark in question only because that lack of due care was itself made possible by the error previously made by OHIM in removing, unilaterally, the reference to the appointed representatives from its database and for that reason not sending the reminder notification to them.
- 46 Admittedly, a party must display all due care required by the circumstances for the purpose of renewing registration of its Community trade mark in good time, which means in principle that it must react promptly and adequately to receipt of a notification which OHIM sends directly to it pursuant to Rule 29 of the implementing regulation.
- 47 The fact none the less remains that, where such a party has conferred the monitoring of its Community trade mark on a professional representative and has duly notified OHIM to that effect, OHIM is also required to respect that choice by sending its official service notifications to that appointed representative in order to put that appointed representative in a position to defend the interests of its principal with the higher standard of due care which it is supposed to display as a qualified professional (see, in that respect, the guidelines concerning proceedings before OHIM, part A, section 6, paragraph 6.2.3).
- 48 In that respect, OHIM cannot rely on Article 47(2) of Regulation No 207/2009 and Rule 29 of the implementing regulation by claiming that those provisions require it to inform the proprietor of a Community trade mark, but not its professional appointed representative, of the imminent expiry of the registration of that trade mark (see paragraph 31 above).
- 49 That argument is at variance with Rule 67 of the implementing regulation, under which, if a representative has been appointed, all notifications must be addressed to him. Moreover, the Board of Appeal acknowledged in paragraph 19 of the contested decision that it was ‘in fact wrong’ that the reminder notification had been sent directly to the applicant and not to the appointed representatives.
- 50 In the present case, the applicant and its appointed representatives were therefore entitled to expect that, in accordance with Rule 67 of the implementing regulation, all OHIM notifications relating to the trade mark in question and, more particularly, the reminder notification provided for by Rule 29 of that regulation would be addressed to the appointed representatives, who would thus be placed in a position to take any action necessary for the purpose of renewing the registration of the trade mark in question, even in the event that the first two internal monitoring pillars of their time-limit-monitoring system were to fail.
- 51 As regards the consequences of the error made by OHIM in the present case, it must be acknowledged that, had it not been for that error, the appointed representatives would have received the reminder notification directly, which would have led to the activation of the third ‘monitoring pillar’ of their system for monitoring the time-limits and would have given them complete freedom of action to contact the applicant in order to obtain instructions from it for the purpose of renewing the registration of the trade mark in question.

- 52 In this respect, the Court also finds that, taking account, inter alia, of the significance of the trade mark in question for the applicant (that mark coinciding with its commercial designation), the absence of renewal instructions given by the applicant to its appointed representatives is attributable to a mistake or an accident and is not in any event the product of a ‘free and voluntary decision’, as the Board of Appeal appears to have considered in paragraph 15 of the contested decision. It is therefore also wrong to take the view that the absence of such instructions constituted the only cause, or the determinant cause, of the non-renewal of the registration of the trade mark in question.
- 53 By contrast, it must be taken as established with a degree of likelihood bordering on certainty that, if the appointed representatives had been placed in a position to contact the applicant — and there is nothing to justify any assumption that they would not have done so had the reminder notification been addressed to them —, their principal would have given them instructions to request renewal of the registration of the trade mark in question. The second requirement for the application of Article 81(1) of Regulation No 207/2009, as set out in paragraph 36 above, is therefore also satisfied.
- 54 In those circumstances, ultimately, the error or negligence on the part of Mr W., the applicant’s agent, supposing even that it were established, appears to be a specific and fortuitous factor which was made possible, and therefore had detrimental consequences for the applicant, only because of OHIM’s prior error, those two circumstances having contributed in a determinant fashion, in conjunction with the malfunctioning of the first two internal monitoring pillars of the time-limit-monitoring system set up by the appointed representatives, to the failure to renew, in good time, the registration of the trade mark in question.
- 55 Admittedly, as the Board of Appeal observed in paragraph 19 of the contested decision, in accordance with Article 47(2) of Regulation No 207/2009 and Rule 29 of the implementing regulation, the error in question made by OHIM, consisting of the removal of the reference to the appointed representatives from its database and of the resulting failure to send the reminder notification to those appointed representatives, does not give rise to liability on the part of OHIM and has no effect on the expiry of the registration of the trade mark in question.
- 56 It none the less remains necessary for the Board of Appeal to take proper account of that error and its consequences in the assessment of the substance of the application for *restitutio in integrum*, which in itself implies no recognition of liability on the part of OHIM. The degree of due care which parties must demonstrate in order to have their rights re-established must be determined in light of all the relevant circumstances, which, in the present case, necessarily include, as explained above, that error and its repercussions.
- 57 In light of all the foregoing considerations, the Court finds that the Board of Appeal wrongly failed to take into account the error made by OHIM, that being one of the three relevant circumstances in the present case for the purposes of applying Article 81(1) of Regulation No 207/2009.
- 58 As a result of that, the Board of Appeal misapplied that provision.
- 59 Consequently, the validity of the sole ground of appeal must be acknowledged and the contested decision annulled.
- 60 As to the remainder, in accordance with Article 65(6) of Regulation No 207/2009, OHIM is required to take the necessary measures to comply with the present judgment. In those circumstances, there is no need to rule independently on the applicant’s second head of claim.

Costs

- 61 Under Article 87(2) of the Court's Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 62 However, under Article 136(1) of the Rules of Procedure, where an action against a decision of a Board of Appeal is successful, the General Court may order OHIM to bear only its own costs.
- 63 In the present case, as the applicant contributed by its own action and by the action of its appointed representatives to the emergence of the present dispute, a decision that each party is to bear its own costs will constitute a fair application of those provisions.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

- 1. Annuls the decision of the Fourth Board of Appeal of the Office for the Harmonisation of the Internal Market (Trade Marks and Designs) (OHIM) of 15 April 2011 (Case R 1596/2010-4);**
- 2. Orders each party to bear its own costs.**

Forwood

Dehousse

Szwarcz

Delivered in open court in Luxembourg on 25 April 2012.

[Signatures]