

— Order the defendant and the other parties to the proceedings to pay their own costs of the proceedings before the Office and the General Court and pay those of the applicant.

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

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* The figurative mark 'FORTRESS', claiming the colours red, black and white, for services in classes 35, 36 and 42 — Community trade mark registration No 3398451

*Proprietor of the Community trade mark:* The applicant

*Applicant for the declaration of invalidity of the Community trade mark:* The other parties to the proceedings before the Board of Appeal

*Grounds for the application for a declaration of invalidity:* The parties requesting the declaration of invalidity grounded their request on relative grounds for invalidity pursuant to Articles 53(1)(c) in conjunction with Article 8(4) of Council Regulation (EC) No 207/2009. It was also based on United Kingdom non registered trade marks 'FORTRESS', 'FORTRESS INVESTMENTS', and 'FORTRESS INVESTMENT GROUP', used in the course of trade.

*Decision of the Cancellation Division:* Rejected the request for a declaration of invalidity

*Decision of the Board of Appeal:* Annulled the contested decision

*Pleas in law:* Infringement of Article 8(4) of Council Regulation (EC) No 207/2009, as the Board of Appeal failed properly to analyse the question of goodwill under the UK law of passing off and failed properly to assess the risk of misrepresentation and consequent damage.

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#### **Action brought on 17 June 2011 — Fortress Participations v OHIM — Fortress Investment Group and Fortress Investment Group (UK) (FORTRESS)**

(Case T-315/11)

(2011/C 238/56)

*Language in which the application was lodged:* English

#### **Parties**

*Applicant:* Fortress Participations BV (Rotterdam, Netherlands) (represented by: M.L.J. van de Braak, lawyer, B. Ladas, Solicitor, and S. Malynicz, Barrister)

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

*Other parties to the proceedings before the Board of Appeal:* Fortress Investment Group LLC (New York, USA) and Fortress Investment Group (UK) Ltd (London, United Kingdom)

#### **Form of order sought**

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 March 2011 in case R 355/2009-2; and

— Order the defendant and the other parties to the proceedings to pay their own costs of the proceedings before the Office and the General Court and pay those of the applicant.

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

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* The word mark 'FORTRESS', for services in classes 35, 36 and 42 — Community trade mark registration No 2095784

*Proprietor of the Community trade mark:* The applicant

*Applicant for the declaration of invalidity of the Community trade mark:* The other parties to the proceedings before the Board of Appeal

*Grounds for the application for a declaration of invalidity:* The parties requesting the declaration of invalidity grounded their request on relative grounds for invalidity pursuant to Articles 53(1)(c) in conjunction with Article 8(4) of Council Regulation (EC) No 207/2009. It was also based on United Kingdom non registered trade marks 'FORTRESS', 'FORTRESS INVESTMENTS', and 'FORTRESS INVESTMENT GROUP', used in the course of trade.

*Decision of the Cancellation Division:* Rejected the request for a declaration of invalidity

*Decision of the Board of Appeal:* Annulled the contested decision

*Pleas in law:* Infringement of Article 8(4) of Council Regulation (EC) No 207/2009, as the Board of Appeal failed properly to analyse the question of goodwill under the UK law of passing off and failed properly to assess the risk of misrepresentation and consequent damage.

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#### **Action brought on 21 June 2011 — Morelli v OHIM — Associazione Nazionale Circolo del Popolo della Libertà (PARTITO DELLA LIBERTÀ)**

(Case T-321/11)

(2011/C 238/57)

*Language in which the application was lodged:* Italian

#### **Parties**

*Applicant:* Raffaello Morelli (Livorno, Italy) (represented by: G. Frenelli, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Associazione Nazionale Circolo del Popolo della Libertà (Milan, Italy)

#### **Form of order sought**

The applicant claims that the Court should:

— annul the First Board of Appeal's decision of 17 March 2011 and that of the Opposition Division of 14 May 2010;

- declare that the applicant's opposition to the application for registration of a trade mark No 5.890.009 is upheld and refuse the application for that mark;
- order the Associazione Nazionale Circolo del Popolo della Libertà to pay the costs.

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

*Applicant for a Community trade mark:* Associazione Nazionale Circolo del Popolo della Libertà

*Community trade mark concerned:* Word mark 'PARTITO DELLA LIBERTÀ' (application for registration No 5.890.009), for goods and services in classes 9, 14, 16, 24, 25, 35, 36, 38, 41, 42 and 45.

*Proprietor of the mark or sign cited in the opposition proceedings:* Raffaello Morelli

*Mark or sign cited in opposition:* Domain name 'partitodella-liberta.it', assigned by the Autorità proposta all'assegnazione dei domini 'it' to Raffaello Morelli on 9 August 2004, which the opponents claimed was used in the course of trade for goods and services in classes 16, 35, 38, 41 and 45

*Decision of the Opposition Division:* Opposition rejected

*Decision of the Board of Appeal:* Appeal dismissed

*Pleas in law:* Misapplication of Article 8(4) of Regulation No 207/2009 on the Community trade mark, incorrect appraisal of 'use in the course of trade' with reference to a name used in the sphere of politics and incorrect appraisal of the documents proving business use of the earlier sign.

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#### **Action brought on 21 June 2011 — Morelli v OHIM — Brambilla (Partito della Libertà)**

(Case T-322/11)

(2011/C 238/58)

*Language in which the application was lodged:* Italian

#### **Parties**

*Applicant:* Raffaello Morelli (Livorno, Italy) (represented by: G.Brenelli, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Michela Vittoria Brambilla (Milan, Italy)

#### **Form of order sought**

The applicant claims that the Court should:

- annul the First Board of Appeal's decision of 17 May 2011 and that of the Opposition Division of 14 May 2010;
- declare that the applicant's opposition to the application for registration of a trade mark No 6.203.012 is upheld and refuse the application for that mark;

- order Ms Michela Vittoria Brambilla to pay the costs.

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

*Applicant for a Community trade mark:* Michela Vittoria Brambilla.

*Community trade mark concerned:* Figurative mark containing the word element 'Partito della Libertà' (application for registration No 5.6203.012), for goods and services in classes 9, 14, 16, 24, 25, 35, 36, 38, 41, 42 and 45.

*Proprietor of the mark or sign cited in the opposition proceedings:* Raffaello Morelli

*Mark or sign cited in opposition:* Domain name 'partitodella-liberta.it', assigned by the Autorità proposta all'assegnazione dei domini 'it' to Raffaello Morelli on 9 August 2004, which the opponents claimed was used in the course of trade for goods and services in classes 16, 35, 38, 41 and 45

*Decision of the Opposition Division:* Opposition rejected.

*Decision of the Board of Appeal:* Appeal dismissed.

*Pleas in law:* Misapplication of Article 8(4) of Regulation No 207/2009 on the Community trade mark, incorrect appraisal of 'use in the course of trade' with reference to a name used in the sphere of politics and incorrect appraisal of the documents proving business use of the earlier sign.

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#### **Action brought on 15 June 2011 — MasterCard and Others v Commission**

(Case T-330/11)

(2011/C 238/59)

*Language of the case:* English

#### **Parties**

*Applicants:* MasterCard, Inc. (Wilmington, United States), MasterCard International, Inc. (Wilmington, United States) and MasterCard Europe SPRL (Waterloo, Belgium) (represented by: B. Amory, V. Brophy and S. McInnes, lawyers)

*Defendant:* European Commission

#### **Form of order sought**

- Declare the application admissible;
- Annul, in its entirety, the Commission's negative decision based on the exception in Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p.43);
- Declare the Commission's interpretation of Article 8 of Regulation (EC) No 1049/2001 to be unfounded in law; and