

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The other party to the proceedings before the Board of Appeal

*Community trade mark concerned:* The word mark 'SÔ:UNIC', for goods in class 3 — Community trade mark application No 8197972

*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant

*Mark or sign cited in opposition:* A series of 24 Community, International, UK and Irish registered trade marks consisting of the word 'SO' combined with other material, for goods in class 3; A series of 17 unregistered signs consisting of the word 'SO' combined with other material, used in connection with goods in class 3

*Decision of the Opposition Division:* Rejected the opposition in its entirety

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:*

— Infringement of Article 8(1)(b) of Council Regulation No 207/2009;

— Infringement of Rule 15(2)(b)(iii) of Commission Regulation No 2868/95; and

— Infringement of Article 8(4) of Council Regulation No 207/2009.

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**Action brought on 7 August 2012 — Sachi Premium-Outdoor Furniture v OHIM — Gandia Blasco (Armchairs)**

(Case T-357/12)

(2012/C 311/17)

*Language in which the application was lodged:* English

**Parties**

*Applicant:* Sachi Premium — Outdoor Furniture, Lda (Estarreja, Portugal) (represented by: M. Oehen Mendes, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Gandia Blasco, SA (Valencia, Spain)

**Form of order sought**

— Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade marks and Designs) of 27 April 2012 (R 969/2011-3);

— Declare the contested Community Design No 1512633-0003 invalid; and

— Order the defendant to pay the costs.

**Pleas in law and main arguments**

*Registered Community design trade mark in respect of which a declaration of invalidity has been sought:* A design for 'armchairs, loungers' — registered Community design No 1512633-0003

*Proprietor of the Community design:* The applicant

*Applicant for the declaration of invalidity of the Community design:* The other party to the proceedings before the Board of Appeal

*Grounds for the application for a declaration of invalidity:* The other party to the proceedings before the Board of Appeal requested the invalidation of the RCD based on Articles 4 to 9 of Council Regulation No 6/2002; Community design registration No 52113-0001, for 'armchairs'

*Decision of the Invalidity Division:* Rejected the application for a declaration of invalidity

*Decision of the Board of Appeal:* Annulled the contested decision and declared the contested Registered Community design invalid

*Pleas in law:* Infringement of Articles 5 to 7 of Council Regulation No 6/2002.

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**Action brought on 8 August 2012 — Vuitton Malletier v OHIM — Nanu-Nana (device of a checked pattern)**

(Case T-359/12)

(2012/C 311/18)

*Language in which the application was lodged:* English

**Parties**

*Applicant:* Louis Vuitton Malletier (Paris, France) (represented by: P. Roncaglia, G. Lazzaretti and N. Parrotta, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Nanu-Nana Handelsgesellschaft mbH für Geschenkartikel & Co.KG (Berlin, Germany)

**Form of order sought**

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 May 2012 in case R 1855/2011-1;
- Order OHIM to pay the costs incurred by the applicant during these proceedings; and
- Order Nanu-Nana Handelsgesellschaft mbH für Geschenk-artikel & Co.KG to pay the costs incurred by the applicant in the proceedings before the OHIM Cancellation Division and Boards of Appeal.

**Pleas in law and main arguments**

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* The figurative mark representing a device of a checked pattern for goods in class 18 — Community trade mark application No 370445

*Proprietor of the Community trade mark:* The applicant

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

*Grounds for the application for a declaration of invalidity:* The other party to the proceedings before the Board of Appeal filed its request for declaration of invalidity against the CTM on the basis of absolute grounds, namely Article 52(1)(a) in connection with Article 7(1)(b), (c), (d), (e)(iii) and (f) of Council Regulation No 207/2009, and on absolute grounds under Article 52(1)(b) of Council Regulation No 207/2009

*Decision of the Cancellation Division:* Upheld the request for invalidity in its entirety

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:*

- Infringement of Article 7(1)(b) of Council Regulation No 207/2009; and
- Infringement of Article 7(3) and Article 52(2) of Council Regulation No 207/2009.

**Appeal brought on 17 August 2012 by the European Commission against the judgment of the Civil Service Tribunal of 13 June 2012 in Case F-63/11, *Macchia v Commission***

(Case T-368/12 P)

(2012/C 311/19)

*Language of the case:* French

**Parties**

*Appellant:* European Commission (represented by J. Currall and D. Martin, acting as Agents)

*Other party to the proceedings:* Luigi Macchia (Brussels, Belgium)

**Form of order sought by the appellant**

- Set aside the judgment of the Civil Service Tribunal of 13 June 2012 in Case F-63/11 *Macchia v Commission*;
- Dismiss the action brought by Mr Macchia in Case F-63/11;
- Hold that each party shall bear its own costs of the present instance;
- Order Mr Macchia to pay the costs incurred before the Civil Service Tribunal.

**Pleas in law and main arguments**

In support of the appeal, the appellant relies on four pleas in law.

1. First plea in law, alleging infringement of the prohibition on ruling *ultra petita*, since the CST, firstly, extended the subject-matter of the dispute by annulling the Commission's decision not only because it refuses any prolongation of Mr Macchia's contract, but also because of its refusal to award him a new contract, while the petition in the application at first instance referred only to the annulment of the Commission's decision not to renew his contract and, secondly, distorted the subject-matter of the dispute by holding that there was no need to examine the complaint of the applicant at first instance, Mr Macchia, that the ground for refusal based on the eight-year rule, despite the fact that that complaint lay at the heart of the action at first instance.
2. Second plea in law, alleging infringement of the adversarial principle, since the CST extended and distorted the subject-matter of the dispute without giving the Commission the opportunity of submitting observations in that regard.