

3. dismisses the application for compensation in Case T-347/11;
4. orders Bruno Gollnisch to pay the costs, including those relating to the applications for interim measures in Cases T-346/11 and T-347/11.

⁽¹⁾ OJ C 252, 27.8.2011.

**Judgment of the General Court of 17 January 2013 —
Solar-Fabrik v OHIM (Premium XL and Premium L)**

(Joined Cases T-582/11 and T-583/11) ⁽¹⁾

(Community trade mark — Applications for the Community word marks Premium XL and Premium L — Absolute grounds for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2013/C 63/37)

Language of the case: German

Parties

Applicant: Solar-Fabrik AG für Produktion und Vertrieb von solartechnischen Produkten (Freiburg im Breisgau, Germany) (represented by: M. Douglas, lawyer)

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

Re:

Two actions brought against two decisions of the First Board of Appeal of OHIM of 1 September 2011 (Case R 245/2011-1 and Case R 246/2011-1 respectively), concerning applications for registration as Community trade marks of the word sign Premium XL and the word sign Premium L respectively

Operative part of the judgment

The Court:

1. Joins Cases T-582/11 and T-583/11 for the purposes of the judgment;
2. Dismisses the actions;
3. Orders Solar-Fabrik AG für Produktion und Vertrieb von solartechnischen Produkten to pay the costs.

⁽¹⁾ OJ C 25, 28.1.2012.

**Judgment of the General Court of 18 January 2013 —
FunFactory v OHIM (Vibrator)**

(Case T-137/12) ⁽¹⁾

(Community trade mark — Application for a three-dimensional trade mark — Vibrator — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Obligation to state reasons — The first sentence of Article 75 of Regulation No 207/2009 — Rights of the defence — The second sentence of Article 75 of Regulation No 207/2009)

(2013/C 63/38)

Language of the case: German

Parties

Applicant: FunFactory GmbH (Brême, Germany) (represented by: K.-D. Franzen, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 19 January 2012 (Case R 1436/2011-4) concerning an application for registration of a three-dimensional sign representing a vibrator.

Operative part of the judgment

The Court:

1. Dismisses the application;
2. Orders FunFactory GmbH to pay the costs.

⁽¹⁾ OJ C 157, 2.6. 2012.

**Action brought on 15 October 2012 — Stromberg
Menswear v OHIM — Leketoy Stormberg Inter
(STORMBERG)**

(Case T-451/12)

(2013/C 63/39)

Language in which the application was lodged: English

Parties

Applicant: Stromberg Menswear Ltd (Leeds, United Kingdom) (represented by: A. Tsoutsanis, lawyer, and C. Tulley, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Leketoy Stormberg Inter AS (Kristiansand S, Norway)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 August 2012 in case R 389/2012-4;

- Alter the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 August 2012 in case R 389/2012-4 and grant the request for re-establishment of rights, and i) primarily, annul the decision of the Cancellation Division of 11 January 2011 to terminate the revocation proceedings under No 4054 C and order the Cancellation Division to re-open the revocation proceedings under No 4054 C and invite Stromberg Menswear to submit observations to continue the revocation proceedings, or, ii) alternatively, allow Stromberg Menswear to appeal the decision of the Cancellation Division of 11 January 2011 to close the revocation proceedings and refer the appeal back to the Board of Appeal; and
- Order OHIM to pay any and all costs and legal fees incurred by Stromberg Menswear in connection with the proceedings before the Board of Appeal and before the General Court.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: The word mark 'STORMBERG', for goods and services in class 25 — Community trade mark registration No 2557155

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

Party applying for revocation of the Community trade mark: The applicant

Decision of the Cancellation Division: Declared the cancellation proceedings closed following a surrender of the contested CTM by its proprietor

Decision of the Board of Appeal: Rejected the request for restitution in integrum into the time limit for filing the notice of appeal and declared that the appeal was deemed not having been filed

Pleas in law:

- Infringement of Article 81 of Council Regulation No 207/2009;
- Infringement of Articles 75 and/or 76 of Council Regulation No 207/2009.

Action brought on 18 October 2012 — Stromberg Menswear v OHIM — Leketoy Stormberg Inter (STORMBERG)

(Case T-457/12)

(2013/C 63/40)

Language in which the application was lodged: English

Parties

Applicant: Stromberg Menswear Ltd (Leeds, United Kingdom) (represented by: A. Tsoutsanis, lawyer, and C. Tully, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Leketoy Stormberg Inter AS (Kristiansand S, Norway)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 August 2012 in case R 428/2012-4;
- Alter the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 August 2012 in case R 428/2012-4 and grant the request for re-establishment of rights, and i) primarily, annul the decision of OHIM to allow conversion, or, ii) alternatively, allow Stromberg Menswear to appeal the decision of OHIM to allow the conversion and refer the appeal back to the Board of Appeal; and
- Order OHIM to pay any and all costs and legal fees incurred by Stromberg Menswear in connection with the proceedings before the Board of Appeal and before the General Court.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: The word mark 'STORMBERG', for goods and services in class 25 — Community trade mark registration No 2557155

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

Party applying for revocation of the Community trade mark: The applicant

Decision of the Cancellation Division: Declared the cancellation proceedings closed following a surrender of the contested CTM by its proprietor

Decision of the Board of Appeal: Dismissed the appeal as inadmissible

Pleas in law:

- Infringement of Articles 57 to 60 of Council Regulation No 207/2009 and Rule 48(1)(c) of Commission Regulation No 2868/95;
- Infringement of Article 81 of Council Regulation No 207/2009;
- Infringement of Article 75 of Council Regulation No 207/2009.