

**Action brought on 4 February 2014 — EE v OHIM (Device of grey pattern)**

(Case T-77/14)

(2014/C 135/58)

*Language of the case: English***Parties***Applicant:* EE Ltd (Hatfield, United Kingdom) (represented by: P. Brownlow, Solicitor)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 24 October 2013 given in Case R 704/2013-1.

**Pleas in law and main arguments***Community trade mark concerned:* The figurative trade mark representing a device of grey pattern for goods and services in Classes 7, 9, 16, 25, 35-39, 41, 42 and 45 — Community trade mark application No 11 388 386*Decision of the Examiner:* Found the mark applied for not eligible for registration*Decision of the Board of Appeal:* Dismissed the appeal*Pleas in law:* Infringement of Article 7(1)(b) CTMR.

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**Action brought on 4 February 2014 — Benediktinerabtei St. Bonifaz v OHIM — Andechser Molkerei Scheitz (Genuß für Leib & Seele KLOSTER Andechs SEIT 1455)**

(Case T-78/14)

(2014/C 135/59)

*Language in which the application was lodged: German***Parties***Applicant:* Benediktinerabtei St. Bonifaz Köperschaft des öffentlichen Rechts (Munich, Germany) (represented by: G. Württenberger and R. Kunze, lawyers)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* Andechser Molkerei Scheitz GmbH (Andechs, Germany)**Form of order sought**

The applicant claims that the Court should:

- annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 November 2013 in Case R 1272/2012-1 concerning the opposition proceedings No B 1 754 228 (Community trade mark application No 9 255 811);
- order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

**Pleas in law and main arguments***Applicant for a Community trade mark:* Applicant*Community trade mark concerned:* Figurative mark containing the word elements 'Genuß für Leib & Seele KLOSTER Andechs SEIT 1455' for goods in Class 29 (Community trade mark application No 9 255 811)*Proprietor of the mark or sign cited in the opposition proceedings:* Andechser Molkerei Scheitz GmbH

*Mark or sign cited in opposition:* National and Community figurative marks containing the word elements 'ANDECHSER NATUR' and 'ANDECHSER NATUR SEIT 1908' for goods and services in Classes 29 and 35

*Decision of the Opposition Division:* Opposition upheld

*Decision of the Board of Appeal:* Appeal dismissed

*Pleas in law:*

- Infringement of the first sentence of Article 75 of Regulation No 207/2009;
- Infringement of the second sentence of Article 76(1) of Regulation No 207/2009
- Infringement of the second sentence of Article 75 of Regulation No 207/2009
- Infringement of Article 8(1)(b) of Regulation No 207/2009

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**Action brought on 6 February 2014 — Energy Brands v OHIM — Smart Wines (SMARTWATER)**

**(Case T-81/14)**

(2014/C 135/60)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Energy Brands, Inc. (New York, United States) (represented by: D. Stone and R. Allos, Solicitors)

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

*Other party to the proceedings before the Board of Appeal:* Smart Wines GmbH (Cologne, Germany)

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 November 2013 given in Case R 903/2013-2;
- Order OHIM and the other party to the proceedings before the Board of Appeal to bear their own costs and those of the applicant.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'SMARTWATER' for goods in Classes 30, 32 and 33 — Community trade mark application No 8 400 194

*Proprietor of the mark or sign cited in the opposition proceedings:* The other party to the proceedings before the Board of Appeal

*Mark or sign cited in opposition:* Earlier Community trade mark registration No 5 853 601 for the word mark 'SMART WINES' for goods in Classes 30 and 33

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

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

*Pleas in law:* Infringement of Articles 8(1)(a)(b) and 8(5) CTMR.

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