

*Contested decision:* Decision of the Second Board of Appeal of OHIM of 17 July 2015 in Case R 2788/2014-2

### **Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- remit the Applicant's case back to the Second Board of Appeal for a decision on the substance of the Restitutio Application in relation to the decision of the First Board of Appeal of 11 December 2013 in Case R 1285/2013-1;
- order OHIM to pay their own costs and those of the Applicant.

### **Pleas in law**

- Infringement of Articles 58, 65(5), 75, 81(1) and 81(4) of Regulation No 207/2009;
- Infringement of Rule 65 of Regulation No 2868/95.

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## **Action brought on 12 October 2015 — Onix Asigurări SA v EIOPA**

**(Case T-590/15)**

(2015/C 414/45)

*Language of the case: Romanian*

### **Parties**

*Applicant:* Onix Asigurări SA (Bucharest, Romania) (represented by: M. Vladu, lawyer)

*Defendant:* European Insurance and Occupational Pensions Authority (EIOPA)

### **Form of order sought**

The applicant claims that the Court should:

- declare that the defendant has failed to act for the purposes of taking a decision regarding the misapplication by the Istituto per la Vigilanza sulle Assicurazioni (Italian supervisory authority for the insurance sector) of the provisions of Article 40(6) of Council Directive 92/49/EEC;
- in the alternative, annul decision BOA 2015 001 of the Board of Appeal of 3 August 2015 and decision EIOPA-14-267 of the President of 6 June 2014, confirmed in the position statement EIOPA-14-653 of 24 November 2014;
- declare the defendant liable for the damage caused to the applicant by the defendant's failure to take a decision, in accordance with the first indent and by taking the decisions referred to in the second indent.

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

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging infringement of Article 17 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council

- There is no decision lawfully adopted by the defendant concerning the validity and appropriateness of opening an investigation;
  - Decision EIOPA-14-267 of the President of 6 June 2014 was adopted without the conditions laid down in Article 39(1)(2) and (3) of the regulation being fulfilled;
  - The reasons for decision EIOPA-14-267 of the President of 6 June 2014 are not connected to the appropriateness of starting an investigation, being in reality concerned with the procedural means available to the applicant against the decision of the Italian national authority.
2. Second plea in law, alleging infringement of a substantial procedural requirement in relation to decision BOA 2015 001 of the Board of Appeal of 3 August 2015 and decision EIOPA-14-267 of the President of 6 June 2014
- The decision of the Board of Appeal was taken without analysing the legality and the validity of decision EIOPA-14-267 of the President of 6 June 2014 and the Board of Appeal gave a decision without analysing all of the matters submitted to it;
  - The decision EIOPA-14-267 of the President of 6 June 2014 was issued without the conditions laid down in Article 39(1)(2) and (3) of the regulation being fulfilled and without giving reasons, at least as far as concerns the essential aspects of that analysis.
3. Third plea in law, alleging the existence of material damage and damage to image suffered by the applicant (decline in turnover and profit, damage to reputation) caused directly and intentionally by the defendant by its failure to take a decision and by adopting the abovementioned decisions which are null and void.

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**Action brought on 12 October 2015 — Novartis v OHIM — SK Chemicals (Representation of a patch)**

**(Case T-592/15)**

(2015/C 414/46)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Novartis AG (Basel, Switzerland) (represented by: M. Douglas, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* SK Chemicals GmbH (Eschborn, Germany)

**Details of the proceedings before OHIM**

*Proprietor of the trade mark at issue:* Applicant

*Trade mark at issue:* Community figurative mark (Representation of a patch) — Application for registration No 11 293 362

*Procedure before OHIM:* Cancellation proceedings

*Contested decision:* Decision of the Fifth Board of Appeal of OHIM of 7 August 2015 in Case R 2342/2014-5