

In support of its contentions, the applicant submits, specifically, that it correctly and consistently carried out its contractual obligations, whereas, by contrast, the Commission breached Articles II.1.11, II.16.1, II.16.2 and II.29 of the General Contractual Conditions, as well as the applicant's rights of defence and the provisions contained in Regulation No 2185/96. <sup>(1)</sup>

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<sup>(1)</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292 of 15.11.1996, p. 2).

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**Action brought on 26 July 2010 — Three-N-Products Private/OHMI — Shah (AYUURI NATURAL)**

**(Case T-313/10)**

(2010/C 260/30)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Three-N-Products Private Ltd (New Delhi, India) (represented by: C. Jäger, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Mr S Shah, Mr A Shah, Mr M Shah — A Partnership t/a FUDCO (Wembley, United Kingdom)

**Form of order sought**

— Annul the decision of the Fourth Board of Appeal of the Office For Harmonisation in the Internal Market (Trade Marks and Designs) of 1 June 2010 in case R 1005/2009-4;

— Order the defendant to confirm the decision of the Opposition Division of the Office For Harmonisation in the Internal Market (Trade Marks and Designs) of 2 July 2009 and to reject the community trade mark application No 5805387 in its entirety;

— Order the defendant to bear the costs of the proceedings;

— Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal and the Opposition Division, should it become an intervening party in this case.

**Pleas in law and main arguments**

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

*Community trade mark concerned:* The word mark 'AYUURI NATURAL', for goods in classes 3 and 5

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

*Mark or sign cited:* Community trade mark registration No 2996098 of the figurative mark 'Ayur', for, amongst others, the goods in classes 3 and 5; Community trade mark registration No 5429469 of the word mark 'AYUR', for, amongst others, goods in classes 3 and 5

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

*Decision of the Board of Appeal:* Upheld the appeal, annulled the contested decision and rejected the opposition

*Pleas in law:* The applicant advances two pleas in law in support of its application.

On the basis of its first plea, the applicant claims that the contested decision infringes Articles 7 and 8 of Council Regulation (EC) No 207/2009, as the Board of Appeal erroneously stated that there is no likelihood of confusion and that the earlier trademarks have a suggestive connotation in relation to the goods at hand which reduces the distinctive character of the earlier marks.

By its second plea, the applicant considers that the contested decision infringes Article 65(2) of Council Regulation (EC) No 207/2009, as the Board of Appeal misused its power by ruling the contested decision since it lacks objectivity and legal basis.