

*Defendant:* Federal Republic of Germany

### Form of order sought

- Declare that, by failing to adopt the laws, regulations and administrative provisions necessary fully to implement Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE), <sup>(1)</sup> or by failing fully to inform the Commission thereof, the Federal Republic of Germany has failed to fulfil its obligations under that directive;
- order the Federal Republic of Germany to pay the costs.

### Pleas in law and main arguments

The period prescribed for implementation of the Directive expired on 14 May 2009.

<sup>(1)</sup> OJ 2007 L 108, p. 1.

**Appeal brought on 15 September 2010 by Grain Millers, Inc. against the judgment of the General Court (Seventh Chamber) delivered on 9 July 2010 in Case T-430/08: Grain Millers, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Grain Millers GmbH & Co. KG,**

**(Case C-447/10 P)**

(2010/C 301/26)

*Language of the case: English*

### Parties

*Appellant:* Grain Millers, Inc. (represented by: L.-E. Ström, K. Martinsson, advokater)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs), Grain Millers GmbH & Co. KG

### Form of order sought

The appellant claims that the Court should:

- Grain Millers, Inc. requests that the decision of the General Court of the European Union (Seventh Chamber), case no. T-430/08, dated 9 July 2010 confirming the decision of the Second Board of Appeal of OHIM of 23 July 2008 (case R 478/2007-2) concerning opposition proceedings between Grain Millers GmbH & Co. KG and Grain Millers, Inc be set aside in its entirety and that the OHIM be ordered to pay the costs of the proceedings before the European Court of Justice and the General Court and that the defendants are ordered to pay the costs incurred before the OHIM Board of Appeal and the OHIM Opposition division.

### Pleas in law and main arguments

The case concerns the issue of whether Grain Millers GmbH & KG has provided sufficient evidence of use of the sign GRAIN MILLERS to fulfil the conditions in Article 8 (4) of the Regulation <sup>(1)</sup> so that said sign constitutes a bar to the Appellant's CTM application no. 003650256 GRAIN MILLERS.

The General Court has previously, in the case Alberto Jorge Moreira da Fonseca OHIM — General Optica, T-318/06 to T-321/06, paragraphs 33-35, 24 March 2009 addressed the interpretation of the purpose of the condition 'of more than mere local significance' found in Article 8(4) of the Regulation, namely to restrict the possibilities of conflict to those which may exist with signs which are truly significant and that this should be assessed not only from geographical dimension but also from an economical dimension of the sign's significance, which is assessed in the light of the length of time for which it has fulfilled its function in the course of trade and the degree to which it has been used. However, in the appealed decision the General Court has not adopted this approach, and there is nothing that suggests the General Court even was aware of the principles laid down in that case.

The applicant submits that the General Court has erroneously held that Article 8(4) does not require proof of genuine use of the sign in support of the opposition as is required by Article 43(2) of the Regulation.

The General Court has erroneously set aside previous case law regarding assessment of evidence and the requisite standard of proof.

<sup>(1)</sup> Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark  
OJ L 11, p. 1

**Appeal brought on 16 September 2010 by AstraZeneca AB, AstraZeneca plc against the judgment of the General Court (Sixth Chamber, Extended Composition) delivered on 1 July 2010 in Case T-321/05: AstraZeneca AB, AstraZeneca plc v European Commission**

**(Case C-457/10 P)**

(2010/C 301/27)

*Language of the case: English*

### Parties

*Appellants:* AstraZeneca AB, AstraZeneca plc (represented by: M. Brealey QC, M. Hoskins QC, D. Jowell, Barristers, F. Murphy, Solicitor)

*Other parties to the proceedings:* European Federation of Pharmaceutical Industries and Associations (EFPIA), European Commission