

- Consider the trade mark application No 10 128 262 GATEWIT fully sustained;
- Order the OHMI and the Opponent to pay the costs.

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

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* Word mark 'GATEWIT' for services in Class 42 — Community trade mark application No 10 128 262

*Proprietor of the mark or sign cited in the opposition proceedings:* Wit-Software, Consultoria e Software para a Internet Móvel, SA

*Mark or sign cited in opposition:* The figurative mark containing the word elements 'wit software' for goods and services in Classes 9, 38 and 42 as well as the national registration of the company name 'Wit-Software, Consultoria e Software para a Internet Móvel, SA'

*Decision of the Opposition Division:* The opposition was rejected

*Decision of the Board of Appeal:* The decision of the Opposition Division was annulled and the trade mark applied for rejected

*Pleas in law:*

- Violation of Article 8(1)(b) of Regulation No 207/2009;
- Violation of Article 8(4) of Regulation No 207/2009.

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### **Action brought on 27 May 2014 — REWE-Zentral/OHIM — Vicente Gandia Pla (MY PLANET)**

(Case T-362/14)

(2014/C 261/55)

*Language in which the application was lodged: English*

### **Parties**

*Applicant:* REWE-Zentral AG (Köln, Germany) (represented by: M. Kinkeldey, S. Brandstätter and A. Wagner, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Vicente Gandia Pla, SA (Chiva, Spain)

### **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 6 March 2014 in Case R 201/2013-1;
- Condemn the defendant to the costs of the proceedings.

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

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark containing the word elements 'MY PLANET' for goods in classes 25, 32 and 33 — Community trade mark application No 8 566 515

*Proprietor of the mark or sign cited in the opposition proceedings:* Vicente Gandia Pla, SA

*Mark or sign cited in opposition:* The word mark 'EL MIRACLE PLANET' for goods in classes 25, 32 and 33

*Decision of the Opposition Division:* The Opposition was allowed

*Decision of the Board of Appeal:* The appeal was dismissed

*Pleas in law:* Infringement of Articles 8(1)(b) and 41(1) of Regulation No 207/2009

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**Action brought on 23 May 2014 — Penny-Markt v OHIM — Boquoi Handels (B! O)**

**(Case T-364/14)**

(2014/C 261/56)

*Language in which the application was lodged:* German

**Parties**

*Applicant:* Penny-Markt GmbH (Cologne, Germany) (represented by: M. Kinkeldey, S. Brandstätter and A. Wagner, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Boquoi Handels OHG (Straelen, Germany)

**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 21 March 2014 in Case R 1201/2013-4;
- Order the defendant to pay the costs.

**Pleas in law and main arguments**

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* the figurative mark including the word element 'B! O' for goods in Classes 29, 30, 31 and 32 — Community trade mark No 10 038 008

*Proprietor of the Community trade mark:* the applicant

*Applicant for the declaration of invalidity of the Community trade mark:* Boquoi Handels OHG

*Grounds for the application for a declaration of invalidity:* the national and Community trade mark 'bo' for goods and services in Classes 5, 16, 21, 29, 31, 32, 33 and 35

*Decision of the Cancellation Division:* the application for a declaration of invalidity was rejected

*Decision of the Board of Appeal:* the decision of the Cancellation Division was annulled and the Community trade mark was declared invalid