

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 27 August 2008 (Case R 849/2007-2) relating to opposition proceedings between adidas AG and Patrick Holding ApS.

Operative part

The Court:

1. Dismisses the action;
2. Orders adidas AG to pay the costs.

**Judgment of the General Court (Sixth Chamber) of 29 September 2011 —
New Yorker SHK Jeans v OHIM — Vallis K. — Vallis A. (FISHBONE)**

(Case T-415/09)

(Community trade mark — Opposition proceedings — Application for registration of the Community word mark FISHBONE — Earlier national figurative mark FISHBONE BEACHWEAR — Relative ground for refusal — Partial refusal of registration — Genuine use of the earlier mark — Consideration of additional evidence — Statement of reasons — Proof of genuine use — Likelihood of confusion — Article 42(2) and (3) and Article 76(2) of Regulation (EC) No 207/2009 — Second sentence of Rule 22(2) of Regulation (EC) No 2868/95 — Article 75 of Regulation No 207/2009 — First subparagraph and second subparagraph, heading (a), of Article 15(1) and Article 42(2), (3) and (5) of Regulation No 207/2009 — Article 8(1)(b) of Regulation No 207/2009)

1. *Community trade mark — Observations of third parties and opposition — Examination of the opposition — Proof of use of the earlier mark — Time-limit set by the Office — Submission of additional evidence after expiry of the time-limit where there are new factors — Lawfulness (Commission Regulation No 2868/95, Art. 1, Rule 22(1)) (see paras 27, 31)*

2. *Community trade mark — Observations of third parties and opposition — Examination of the opposition — Proof of use of the earlier mark — Genuine use — Concept — Criteria for assessment (Council Regulation No 207/09, Art. 42(2) and (3)) (see paras 51-53)*

3. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark (Council Regulation No 207/09, Art. 8(1)(b)) (see paras 87, 94, 97)*

Re:

ACTION brought against the decision of the First Board of Appeal of OHIM of 30 July 2009 (Case R 1051/2008-1), concerning opposition proceedings between Vallis K. – Vallis A. & Co. OE and New Yorker SHK Jeans GmbH & Co. KG.

Operative part

The Court:

1. Dismisses the action;

2. Orders New Yorker SHK Jeans GmbH & Co. KG to pay the costs.