Decision of the examiner:	Registration refused
Decision of the Board of Appeal:	Appeal dismissed

Operative part

The Court:

1. Dismisses the action;

2. Orders Deutsche Bahn AG to pay the costs.

Judgment of the General Court (Eighth Chamber) of 12 November 2010 — Deutsche Bahn v OHIM
(Vertical combination of the colours grey and red)

(Case T-405/09)

(Community trade mark — Application for Community trade mark consisting in a vertical combination of the colours grey and red — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character (Council Regulation No 207/2009, Art. 7(1)(b)) (see paras 26, 28-37)

Re:

ACTION brought against the decision of the First Board of Appeal of OHIM of 23 July 2009 (Case R-372/2009-1) concerning an application for registration of a colour sign, consisting in the combination of the colours grey and red, as a Community trade mark.

Information relating to the case

Applicant for the Community trade mark:	Deutsche Bahn AG
Community trade mark sought:	Trade mark consisting of the combination of the colours grey and red for services in Class 39 — Application No 6735401
Decision of the examiner:	Application refused
Decision of the Board of Appeal:	Appeal dismissed

Operative part

The Court:

1. Dismisses the action;

2. Orders Deutsche Bahn AG to pay the costs.