Judgment of the General Court (First Chamber) of 17 December 2010 — Chocoladefabriken Lindt & Sprüngli v OHIM (Shape of a chocolate rabbit)

(Case T-395/08)

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of a chocolate rabbit — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009) — No distinctive character acquired through use — Article 7(3) of Regulation (EC) No 40/94 (now Article 7(3) 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 40/94, Art. 7(1)(b)) (see paras 25, 46-47)

Re:

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 18 July 2008 (Case R 419/2008-4), concerning an application for registration as a Community trade mark of a three-dimensional sign consisting of the shape of a chocolate rabbit.

Information relating to the case

Applicant for the Community trade mark:	Chocoladefabriken Lindt & Sprüngli AG
Community trade mark sought:	Three-dimensional mark in the form of a chocolate rabbit for goods in Class 30 — Application No 3664372

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

Operative part

The Court:

1. Dismisses the action;

2. Orders Chocoladefabriken Lindt & Sprüngli AG to pay the costs.

Judgment of the General Court (First Chamber) of 17 December 2010 — Storck v OHIM (Shape of a chocolate mouse)

(Case T-13/09)

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of a chocolate mouse — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009) — Rights of the defence)

Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character — Three-dimensional mark (Council Regulation No 40/94, Art. 7(1)(b)) (see para. 44)

Re:

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 12 November 2008 (Case R 185/2006-4), concerning an application for registration as a Community trade mark of a three-dimensional sign consisting of the shape of a chocolate mouse.