2. Orders OHIM to bear its own costs and to pay those incurred by José Manuel Baena Grupo, SA, and orders Herbert Neuman and Andoni Galdeano del Sel to bear their own costs.

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

(Case T-336/08)

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of a chocolate rabbit with a red ribbon — 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 — Exception — Acquisition of distinctive character through use — Three-dimensional mark (Council Regulation No 40/94, Art. 7(1)(b) and (3)) (see paras 59, 67-71)

Re:

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 11 June 2008 (Case R 1332/2005-4), concerning an application for registration as a Community trade mark of a three-dimensional sign consisting of the shape of a chocolate rabbit with a red ribbon.

Information relating to the case

Applicant for the Community trade mark:	Chocoladefabriken Lindt & Sprüngli AG
Community trade mark sought:	Three-dimensional mark, representing an Easter bunny made of chocolate, for goods in Class 30 — Application No 3844446
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.