Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

8 June 2016*

(EU trade mark — Application for an EU figurative mark representing a peace symbol — Application for restitutio in integrum — Non-compliance with the time limit for bringing an action before the General Court)

In Case T-583/15,

Monster Energy Company, established in Corona, California (United States), represented by P. Brownlow, Solicitor,

applicant,

v

European Union Intellectual Property Office (EUIPO), represented by D. Gája, acting as Agent,

defendant,

ACTION brought against the decision of the Second Board of Appeal of EUIPO of 17 July 2015 (Case R 2788/2014-2), concerning an application for registration as an EU trade mark of a figurative sign representing a peace symbol,

THE GENERAL COURT (Second Chamber),

composed of M.E. Martins Ribeiro, President, S. Gervasoni and L. Madise (Rapporteur), Judges,

Registrar: E. Coulon,

having regard to the application lodged at the Court Registry on 5 October 2015,

having regard to the response lodged at the Court Registry on 6 November 2015,

having regard to the fact that no request for a hearing was submitted by the main parties within three weeks after service of notification of the close of the written part of the procedure, and having decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure of the General Court,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

1 On 21 November 2012, the applicant, Monster Energy Company, filed an application for registration of the following figurative sign with the European Union Intellectual Property Office (EUIPO) pursuant to Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1):



2 The goods in respect of which registration was sought are in Classes 5, 30 and 32 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

3 By decision of 8 May 2013, the examiner refused registration of the mark applied for on the basis of Article 7(1)(b) and (2) of Regulation No 207/2009, read in conjunction with Rule 11 of Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1), as amended.

4 On 8 July 2013, the applicant filed a notice of appeal with EUIPO, pursuant to Articles 58 to 64 of Regulation No 207/2009, against the examiner's decision.

5 By decision of 11 December 2013 ('the first decision'), the First Board of Appeal of EUIPO dismissed the appeal.

6 By fax of 23 June 2014, the applicant claimed before EUIPO that, following a check on the progress of the case, it had discovered that the First Board of Appeal of EUIPO had adopted the first decision. However, it maintained that it had not received the notification of that decision. Accordingly, it requested that a new period for bringing an action should begin to run for the purpose of possibly bringing an action before the General Court against the first decision.

7 By email of 2 July 2014, having received no reply to the fax of 23 June 2014, the applicant repeated its request by filing a complaint with EUIPO.

8 By email of 10 July 2014, the 'Complaints' Unit of the 'User Contact' Service of EUIPO replied to the applicant that the first decision had been notified to it by fax on 20 December 2013, in accordance with what was shown by the transmission report of the machine used to send it, which contained, in addition to the date, the time and the number of the addressee, the word 'OK'. It added, in essence, that the General Court had jurisdiction to deal with an action against the first decision and that that court would assess whether the action was admissible in the light of the factors and evidence provided.

9 By fax of 15 July 2014, the Registry of the Boards of Appeal confirmed to the applicant the content of the transmission report from the fax machine used for the notification of the first decision and stated that a new time limit for bringing an action could not be given by EUIPO.

10 The applicant and the departments of EUIPO also exchanged other letters in the weeks that followed and, in the end, the applicant undertook two steps in parallel.

11 First, by application lodged at the Court Registry on 18 August 2014 and registered as T-633/14, it brought an action before the General Court against the first decision.

12 Secondly, on the same date, it filed with EUIPO an application for *restitutio in integrum* within the meaning of Article 81 of Regulation No 207/2009.

13 In that application, in order to secure the re-establishment of its rights to challenge the first decision before the General Court and so that its application for registration of an EU trade mark would remain on EUIPO's register during the proceedings before the Courts of the European Union, the applicant referred to circumstances and events which it contended resulted, in spite of its allegedly having taken all due care, in its taking cognisance of that decision only on 17 June 2014. It maintained that the notification, dated 20 December 2013, of the first decision did not reach it. It submitted that EUIPO should therefore state that compliance with the time limit for bringing an action before the General Court was to be assessed by using 17 June 2014 as the point from which time started to run and should reinstate the application for registration of the EU trade mark filed by the applicant on its register.

14 By letter of 29 August 2014, the Registry of the Boards of Appeal stated that the application for *restitutio in integrum* could not be allowed on the grounds that Article 81 of Regulation No 207/2009 concerns only deadlines which apply vis-à-vis EUIPO and not deadlines which apply vis-à-vis the General Court, that the transmission report of the fax machine used confirmed that the first decision had been notified on 20 December 2013 and that only the General Court, before which the case had now been brought, could give a ruling on the case.

15 On 28 October 2014, the applicant filed a notice of appeal with EUIPO against the letter of 29 August 2014 from the Registry of the Boards of Appeal. That notice of appeal was supplemented by an additional written statement on 31 December 2014 in which the applicant requested, in addition to the annulment of the letter from the Registry, that its application for *restitutio in integrum* be re-examined.

16 The proceedings continued until the adoption by the Second Board of Appeal of EUIPO, on 17 July 2015, of a decision dismissing the appeal brought before it by the applicant as inadmissible ('the contested decision'). That decision was notified to the applicant on 5 August 2015.

17 In the contested decision, the Board of Appeal referred to certain provisions of Regulation No 207/2009 relating to legal remedies against the decisions of the adjudicating bodies of EUIPO, namely Article 58(1) and Article 65(1) and (5) of that regulation. It also referred to the content of Article 81(1) of that regulation, which defines the general scope of the procedure for *restitutio in integrum*.

18 It also stated that the letter from the Registry of the Boards of Appeal of 29 August 2014 was not a decision originating from a first instance division of EUIPO which could be subject to appeal on the basis of Article 58 of Regulation No 207/2009 and, therefore, that the appeal was inadmissible.

19 It added that, in any event, Article 81(1) of Regulation No 207/2009 was not applicable in the case before it. Pointing out, in essence, that that provision relates to situations in which it has not been possible to comply with a time limit 'vis-à-vis the Office' and that the applicant was requesting that its rights be re-established as regards a time limit vis-à-vis the General Court for bringing an action before that court, that is to say within the context of proceedings which do not take place before EUIPO, the Board of Appeal found that it was not competent to decide on the application for *restitutio in integrum*. In that regard, it rejected the applicant's interpretation that the time limit referred to in that provision was to be understood as a time limit 'regarding' EUIPO or 'in relation to' EUIPO, in other words, calculated in relation to any act of EUIPO.

20 The Board of Appeal also added that the applicant's action against the first decision was pending before the General Court and that this confirmed that the Board of Appeal was not competent to rule on the application for *restitutio in integrum*.

21 By order of 9 September 2015 in *Monster Energy* v *OHIM (Representation of a peace symbol)* (T-633/14, not published, EU:T:2015:658), the General Court dismissed the action against the first decision as manifestly inadmissible owing to its belated nature. That order was the subject of an appeal before the Court of Justice. By order of 4 May 2016 in *Monster Energy* v *EUIPO* (C-602/15 P), the Court of Justice dismissed the appeal.

22 It was in those circumstances that the applicant brought this action on 5 October 2015.

Forms of order sought

23 The applicant claims that the Court should:

— annul the contested decision;

— refer the case back to the Second Board of Appeal of EUIPO for a decision on the substance of the application for *restitutio in integrum*;

— order EUIPO to pay the costs.

24 EUIPO contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

25 The applicant puts forward, in essence, four pleas in law in support of its action. In the first place, it submits that the Board of Appeal infringed Article 58 of Regulation No 207/2009 in finding that the letter from the Registry of the Boards of Appeal of 29 August 2014 could not be subject to appeal on the basis of that provision. In the second place, it maintains that the Board of Appeal infringed Article 65(5) of that regulation by confirming that the date of notification of the first decision, to be used for the purpose of calculating the time limit for bringing an action before the General Court, was 20 December 2013. In the third place, it submits that the Board of Appeal also infringed Article 81 of

that regulation by finding that that article did not apply to the situation in which there was a request to reset the time limit for bringing an action before the General Court and, consequently, by not considering itself competent to apply it in the present case. Lastly, in the fourth place, the applicant maintains that the Board of Appeal failed to give a ruling and infringed Article 75 of Regulation No 207/2009 by not deciding, and thus not stating the reasons for the contested decision in that regard, on the second claim, referred to in paragraph 13 above, which was set out in its application for *restitutio in integrum* and had been repeated in the additional written statement it sent to the Board of Appeal, namely that regarding the reinstatement of its application for registration of an EU trade mark on EUIPO's register pending the examination of its action by the Courts of the European Union.

26 It is appropriate to examine, first, the last plea, alleging a failure to give a ruling and failure to state the reasons for the contested decision.

The plea alleging a failure to give a ruling and a failure to state reasons

27 The applicant submitted before EUIPO its application for *restitutio in integrum* regarding the period for bringing an action before the General Court, stating that if that period were not reset to run from 17 June 2014, it would lose not only the right to bring proceedings before the Courts of the European Union, but also the right to maintain its application for registration of an EU trade mark. It expressly requested, in the heads of claim contained in that application, that it should be stated that the period for bringing proceedings before the General Court was reset to run from 17 June 2014 and that its application for registration of an EU trade mark should be reinstated on EUIPO's register pending the examination of its action by the Courts of the European Union. It repeated those views and heads of claim in its additional written statement before the Board of Appeal.

28 In its action before the General Court, the applicant states that the Board of Appeal did not rule in the contested decision on its request, which is linked to the second right referred to in paragraph 27 above, regarding the reinstatement of its application for registration of an EU trade mark on EUIPO's register pending the examination of its action by the Courts of the European Union. It submits that, *a fortiori*, the contested decision does not contain any statement of reasons in this connection, which is an infringement of an essential procedural requirement which prevents the applicant from being able to properly defend its rights in that regard. It asks the General Court to rule on that request, adding that the failure to state reasons referred to also undermines the ability of the General Court to review the legality of the contested decision.

29 Failure to rule on a head of claim may result in the annulment, at least in part, of a decision of a Board of Appeal (see, to that effect, judgment of 2 July 2002 in *SAT.1* v *OHIM (SAT.2)*, T-323/00, EU:T:2002:172, paragraph 19).

30 In the present case, as is pointed out in paragraph 27 above, the applicant submitted to EUIPO the request that its application for registration of an EU trade mark be reinstated on EUIPO's register pending the examination of its action by the Courts of the European Union, within its application for *restitutio in integrum* regarding the period for bringing proceedings before the General Court, and thus linked that request for reinstatement to its request regarding that period.

31 Since the Board of Appeal confirmed the position of the Registry of the Boards of Appeal that the procedure for *restitutio in integrum* could not apply to a time limit for bringing proceedings before the General Court, the request for the application for registration of an EU trade mark to be reinstated on EUIPO's register, which is linked to the request to reset the period for bringing an action before the General Court to run from 17 June 2014, was itself necessarily rejected. In view of the context of the application for *restitutio in integrum* in which that request for reinstatement was brought before the Board of Appeal there was therefore no failure to rule on its part.

32 That finding is not at odds with the fact, set out in EUIPO's response, that the application for registration of an EU trade mark filed by the applicant currently has the status of 'appeal pending' and not that of 'application refused' on the register. EUIPO noted, irrespective of the context of the application for *restitutio in integrum*, that the refusal to register the mark at issue was the subject of an action before the Courts of the European Union and from that drew the inference that the application for registration was to appear on the register with the status of 'appeal pending'.

33 As regards the alleged failure to state reasons, it must be borne in mind that, in accordance with Article 75 of Regulation No 207/2009, decisions of EUIPO must state the reasons on which they are based. That obligation to state reasons, which also derives from Article 296 TFEU, has been the subject of settled case-law according to which the statement of reasons must disclose in a clear and unequivocal manner the reasoning followed by the institution which adopted the measure in question in such a way as to enable, first, the persons concerned to exercise effectively their right to request judicial review of the contested decision and, secondly, the Courts of the European Union to exercise their power to review the legality of the decision. It is not, however, necessary for the reasoning to go into all the relevant facts and points of law. The question whether the statement of reasons for a decision satisfies those requirements is a question to be assessed with reference not only to its wording but also to its context and the whole body of legal rules governing the matter in question (judgments of 29 February 1996 in *Commission* v *Council*, C-122/94, EU:C:1996:68, paragraph 29, and of 28 January 2016 in *Gugler France* v *OHIM — Gugler (GUGLER)*, T-674/13, not published, EU:T:2016:44, paragraph 52). Likewise, the requirement to state reasons must be assessed according to the circumstances of each case, in particular the content of the measure and the nature of the reasons given, which means that it is not always required that an express view be adopted on all the matters put forward or requested by the persons concerned (judgment of 30 March 2000 in *VBA* v *Florimex and Others*, C-265/97 P, EU:C:2000:170, paragraph 93; see also, to that effect, judgments of 30 November 2000 in *Industrie des poudres sphériques* v *Commission*, T-5/97, EU:T:2000:278, paragraph 199, and of 9 December 2010 in *Tresplain Investments* v *OHIM — Hoo Hing (Golden Elephant Brand)*, T-303/08, ECR, EU:T:2010:505, paragraph 46).

34 As regards the alleged failure to state reasons, it must be held that the contested decision contains a statement of reasons consistent with the requirements referred to in paragraph 33 above, which made it possible to understand the Board of Appeal's reasoning and to compile the summary of that reasoning which appears in paragraphs 17 to 20 above. The reason why the Board of Appeal did not provide a separate statement of reasons for the rejection of the request, which is set out in the application for *restitutio in integrum* and was repeated in the applicant's additional written statement, to reinstate the application for registration of an EU trade mark on EUIPO's register, was also because it dismissed in their entirety the application for *restitutio in integrum* and the appeal brought before it as having been brought before bodies that were not competent to deal with them, which did not require the repetition of the same explanations in respect of each of the requests arising out of them.

35 The plea alleging a failure to give a ruling and a failure to state reasons must therefore be rejected. It is appropriate to examine the third plea for annulment next.

The plea alleging infringement of Article 81 of Regulation No 207/2009

36 According to the applicant, the Board of Appeal infringed Article 81 of Regulation No 207/2009, relating to the procedure for *restitutio in integrum*, by finding that it did not apply to the situation in which there is a request to reset the time limit for bringing an action before the General Court and by concluding that it was not competent to apply that provision in the present case.

37 Article 81(1) of Regulation No 207/2009 provides:

'The applicant for or proprietor of an EU trade mark or any other party to proceedings before the Office who, in spite of all due care required by the circumstances having been taken, was unable to comply with a time limit vis-à-vis the Office shall, upon application, have his rights re-established if the obstacle to compliance has the direct consequence, by virtue of the provisions of this Regulation, of causing the loss of any right or means of redress.'

38 The applicant submits that, by referring to 'a time limit vis-à-vis the Office', the legislature intended to refer to time limits 'regarding' EUIPO or 'in relation to' EUIPO. It maintains that the loss of the possibility of bringing an action before the General Court against a decision of a Board of Appeal owing to failure to comply with the time limit for bringing proceedings should thus be capable of being the subject of a procedure for *restitutio in integrum*, because EUIPO is concerned by such a time limit as the institution which adopted the challengeable decision and as a potential party to the case before the General Court.

39 The applicant takes the view that the expressions 'vis-à-vis', 'regarding' and 'in relation to' have the same meaning. It states that the starting point of the period in question, which is provided for in Regulation No 207/2009, is determined by a decision of EUIPO. It also states, referring to Article 64(3) of that regulation, that the expiry of that period without an action having been brought before the General Court has the result that that decision takes effect. In addition, it points out that Article 81(5) of that regulation, which sets out restrictions on the scope of the procedure for *restitutio in integrum*, does not refer to Article 65 of that regulation, which governs actions before the Courts of the European Union and, inter alia, defines the period for bringing an action. EUIPO is therefore, according to the applicant, concerned in various ways by the period for bringing an action before the General Court and a failure to comply with that time limit is capable of being the subject of an application for *restitutio in integrum*.

40 It must, however, be borne in mind that recital 12 of Regulation No 207/2009 states:

'… It is … essential, while retaining the Union's existing institutional structure and balance of powers, to provide for an Office for Harmonisation in the Internal Market (trade marks and designs) which is independent in relation to technical matters and has legal, administrative and financial autonomy. To this end it is necessary and appropriate that that Office should be a body of the Union having legal personality and exercising the implementing powers which are conferred on it by this Regulation, and that it should operate within the framework of Union law without detracting from the competencies exercised by the Union institutions.'

41 As EUIPO points out, to acknowledge that one of its departments has the power to grant an application for *restitutio in integrum* as regards a time limit for bringing an action before the General Court would mean encroaching upon the jurisdiction of that court, which is the only court, subject to review by the Court of Justice, which may assess whether a case which has been brought before it is admissible, in accordance with Articles 256 and 263 TFEU.

42 In that regard, the provisions in those articles provide that the General Court is to review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties, subject to conditions for admissibility, relating in particular to the fact that the proceedings must be instituted within two months of the publication of the measure, or of its notification to the applicant, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be. Admissibility is one of the criteria for an action which falls within the jurisdiction of the Court, particularly because it must examine it of its own motion, as the Court of Justice has pointed out, inter alia, in the order of 26 February 1981 in *Farrall* v *Commission* (10/81, ECR, EU:C:1981:60), or in the judgment of 23 April 1986 in *Les Verts* v *Parliament* (294/83, EU:C:1986:166, paragraph 19).

43 It is true that the fifth paragraph of Article 263 TFEU provides that acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, offices or agencies intended to produce legal effects in relation to them. However, in the present case, Article 65(5) of Regulation No 207/2009, which states that an action brought against a decision of a Board of Appeal is to be brought before the Court of Justice within two months of the date of notification of the decision of the Board of Appeal, is entirely consistent with the general scheme laid down in Article 263 TFEU so far as concerns the jurisdiction of the Court to assess whether the time limit for bringing an action has been complied with.

44 In that regard, it is apparent from the case file that the applicant brought an action before the General Court after becoming aware of the first decision and that, within that context, the General Court has already dealt with the question of compliance with the time limit for bringing the action against that decision before it. It declared the action to be out of time and therefore inadmissible. Since an appeal was lodged, that assessment could have been reconsidered, but, in any event, by the Courts of the European Union and not by EUIPO. Even if the Board of Appeal of EUIPO had allowed the application for *restitutio in integrum*, that would not in any event have been binding on the General Court in the assessment of whether the action brought before it against the first decision was belated or not.

45 It is not therefore Article 81 of Regulation No 207/2009 relating to *restitutio in integrum* which applies in circumstances where an action brought before the General Court against a decision of a Board of Appeal of EUIPO may be regarded as out of time by the Court, but the provisions applicable to the Court, namely, in addition to Article 263 TFEU, the second paragraph of Article 45 of the Statute of the Court of Justice of the European Union, according to which 'no right shall be prejudiced in consequence of the expiry of a time limit if the party concerned proves the existence of unforeseeable circumstances or of *force majeure*'.

46 Judicial procedure is not, moreover, from the outset divided into two parts, as is provided for in Article 81 of Regulation No 207/2009, with, first, an action being brought and, secondly, the filing of an application for *restitutio in integrum* on which the Court would rule separately in order to assess whether the action is admissible in the light of the time limit for bringing that action. It is within the very context of the proceedings initiated after an action has been brought that the admissibility of that action is in principle examined and it is only if a plea of inadmissibility requesting that the Court rule in that regard without going to the substance of the case is brought before the Court or if the Court raises, in that regard, of its own motion an absolute bar to proceeding, that it may give a separate ruling as to admissibility and then rule on the substance if it nevertheless accepts that the action is admissible.

47 Consequently, the applicant's arguments based on considerations of vocabulary and on the fact that EUIPO is concerned in various ways by the period for bringing an action before the General Court cannot succeed.

48 The procedural provisions of Article 81 of Regulation No 207/2009 are themselves entirely consistent with the interpretation of Articles 256 and 263 TFEU set out in paragraphs 41 to 47 above.

49 Article 81 of Regulation No 207/2009 contains a paragraph 2 which states that the omitted act must be completed within the period for filing the application for *restitutio in integrum*, that is to say within two months from the removal of the obstacle to compliance with the time limit. Article 81(4) of that regulation states that 'the department competent to decide on the omitted act shall decide upon the application'. The omitted act is the act which should have been carried out within the period that the application seeks to have reset and the aim of which is to secure a right or exercise a remedy.

50 In the present case, concerning an action before the General Court against a decision of a Board of Appeal of EUIPO, even if Article 81 of Regulation No 207/2009 were to be applicable, that would require, in the light of paragraphs 2 and 4 of that article, the omitted act, namely the action, to be effected within the two-month period from the removal of the obstacle to compliance which did not make it possible for it to be lodged earlier and, within the same period, the application for *restitutio in integrum* to be brought before the adjudicating body competent to decide on that action, namely the General Court. That does not correspond to the interpretation sought by the applicant and confirms above all that no department or adjudicating body of EUIPO may give a decision.

51 Furthermore, the finding in paragraph 45 above cannot be invalidated by the fact, pointed out by the applicant, that paragraph 5 of Article 81 of Regulation No 207/2009, which provides for exceptions to the application of that article in respect of certain time limits regarding proceedings before EUIPO, does not refer to the time limit for bringing an action before the General Court set out in Article 65 of that regulation. The explanation for the fact that that time limit is not referred to is that Article 81 of Regulation No 207/2009 does not, as a whole, apply to proceedings brought before the Courts of the European Union. It is true that, as the applicant also states, Article 82 of that regulation, entitled 'Continuation of proceedings', which relates to other situations of non-compliance with time limits 'vis-à-vis' EUIPO which are capable of being rectified, on the contrary refers expressly, in paragraph 2 thereof, among the provisions laying down a time limit which are excluded from its scope, to Article 65 of that regulation. However, that lack of consistency between the way in which the provisions of Articles 81 and 82 of Regulation No 207/2009 are set out does not, on the other hand, preclude the observation that, in both types of situation, provisions regarding time limits 'vis-à-vis' EUIPO cannot apply to time limits for bringing an action before the Courts of the European Union.

52 The Board of Appeal was therefore right in declaring itself not competent, like the Registry of the Boards of Appeal, to examine the application for *restitutio in integrum* filed by the applicant and the third plea must therefore be rejected.

The other pleas

53 The finding made in paragraph 52 above is sufficient for the action, including the head of claim relating to the referral of the case back to EUIPO, to be dismissed, without it being necessary to examine the other two pleas put forward by the applicant, which are ineffective inasmuch as they are not capable, on the assumption that they are well founded, of resulting in the annulment of the contested measure.

54 The Board of Appeal dismissed the appeal against the letter from the Registry of the Boards of Appeal of 29 August 2014 as inadmissible. In that regard, it is sufficient that one of the grounds of inadmissibility set out by the Board of Appeal is well founded, as has been held to be the case in paragraph 52 above, for the present action against the contested decision not to be upheld (see, by analogy, as regards a number of grounds justifying a decision of the Commission, judgments of 6 November 1990 in *Italy* v *Commission*, C-86/89, EU:C:1990:373, paragraph 20, and of 14 December 2005 in *General Electric* v *Commission*, T-210/01, EU:T:2005:456, paragraphs 42 and 43, or, as regards a number of grounds of illegality set out by the General Court, judgment of 18 March 1993 in *Parliament* v *Frederiksen*, C-35/92 P, EU:C:1993:104, paragraph 31, or, as regards the General Court having a number of grounds for dismissing an action, order of 24 January 1994 in *Boessen* v *ESC*, C-275/93 P, EU:C:1994:20, paragraphs 25 and 26).

55 As regards, in particular, the applicant's second plea, according to which the Board of Appeal allegedly infringed Article 65(5) of Regulation No 207/2009 by confirming that the date of notification of the first decision, to be used for the purpose of calculating the period for bringing an action before the

General Court, was 20 December 2013, EUIPO is correct in stating, in essence, that that plea is ineffective in view of the reasoning of the Board of Appeal which resulted in the application for *restitutio in integrum* being dismissed as inadmissible.

Costs

56 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by EUIPO.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. Dismisses the action;

2. Orders Monster Energy Company to pay the costs.

Martins Ribeiro Gervasoni Madise

Delivered in open court in Luxembourg on 8 June 2016.

[Signatures]