



Press release of July 20, 2015

**General Court of the European Union: Irish company
LLR-G5 Ltd, represented by BARDEHLE PAGENBERG,
prevails in obtaining invalidation of Community trademark
“LLRG5” surreptitiously filed by company director**

The Irish company LLR-G5, established in 1999, is marketing an organic Silicium called “G5”. One of its original shareholders and directors was Mr. Loïc Le Ribault. While still director of the company, he obtained a registration of “LLRG5” as a Community trademark, originally filed by a third person but subsequently transferred to him.

After Mr. Loïc Le Ribault having left the company, this mark ended up with the Spanish company Silicium España Laboratorios, SL. When efforts to have the mark assigned to LLR-G5 Ltd failed, LLR-G5, represented by MacLachlan & Donaldson, Dublin, Ireland, requested that the mark be declared invalid because the application had been filed in bad faith. The Cancellation Division of the Office for Harmonization in the Internal Market (OHIM) rejected the claim, finding nothing objectionable in the filing of the application by a director of LLR-G5. Upon LLR-G5’s appeal, OHIM’s Board of Appeal reversed in a carefully worded decision of March 7, 2013 (Case No. R-383/2012-1). The case came before the European Union’s General Court when Silicium España appealed. LLR-G5, represented by BARDEHLE PAGENBERG instructed by MacLachlan & Donaldson, intervened on the side of OHIM.

In its judgment of June 16, 2015, the General Court dismissed the application brought by Silicium España as unfounded (Case No. T-306/13). Silicium España claimed that Mr. Loïc Le Ribault actually owned the rights to the name, which was partially composed of his initials (LLR). The Court dismissed these arguments. The Court accepted that when invalidation is requested on the basis of bad faith, as provided for in Article 52 (1) lit b Community Trademarks Regulation, the applicant bears the burden of proof. The Court found that LLR-G5 had established before OHIM the facts leading to the conclusion that the application had been filed in bad faith. The Court referred to previous case law and concluded that the cases qualified as “bad faith” need to be established on a case-by-case basis. The Court agreed with OHIM and the Intervener that the “true” person in interest was the then director of the company, not the third party. As director of the company he knew that what he filed in his own name as a Community trademark was the name of the company of which he was a director. As a director he had the obligation to act in the interests of the company, not in his private interest. The fact that the mark eventually

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ended up in the hands of a Spanish competitor of the Irish company demonstrated that the acts were undertaken against the interests of the Irish company.

The judgment is subject to a possible appeal on points of law to the Court of Justice of the European Union, which must be filed before the end of July 2015.

Representatives of LLR-G5 Ltd:

BARDEHLE PAGENBERG (Munich):

Dr. Henning Hartwig (Attorney-at-Law, Partner)

Professor Dr. Alexander von Mühlendahl, LL.M. (Attorney-at-Law)

Representatives of Silicium España Laboratorios, SL:

Garrigues (Madrid):

Celia Sueiras Villalobos (Attorney-at-Law)

General Court of the European Union (Third Chamber):

Dr. Savvas Pappasavvas (Presiding Judge)

BARDEHLE PAGENBERG combines the professional expert know-how of attorneys-at-law and patent attorneys, European patent attorneys, European trademark attorneys, technical advisors and qualified legal counsel. Hand-selected teams of patent attorneys and attorneys-at-law provide top-quality services tailored to the specific needs of the client and the characteristics of the case.

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