

**Order of the General Court of 6 June 2023 — Spreewood Distillers v EUIPO — Radgonske gorice (STORK)**

(Case T-433/22) <sup>(1)</sup>

*(EU trade mark — Opposition proceedings — Application for EU word mark STORK — Earlier national word mark GOLDEN STORK — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001 — Action manifestly lacking any foundation in law)*

(2023/C 271/43)

*Language of the case: English*

**Parties**

*Applicant:* Spreewood Distillers GmbH (Schleipzig, Germany) (represented by: O. Spieker and D. Mienert, lawyers)

*Defendant:* European Union Intellectual Property Office (represented by: N. Lamsters and T. Frydendahl, acting as Agents)

*Other party to the proceedings before the Board of Appeal of EUIPO:* Radgonske gorice d.o.o. (Gornja Radgona, Slovenia)

**Re:**

By its action under Article 263 TFEU, the applicant seeks the annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 10 May 2022 (Case R 1782/2021-5).

**Operative part of the order**

1. The action is dismissed.
2. Each party shall bear its own costs.

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<sup>(1)</sup> OJ C 326, 29.8.2022.

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**Action brought on 13 March 2023 — Institut Jožef Stefan v Commission**

(Case T-134/23)

(2023/C 271/44)

*Language of the case: English*

**Parties**

*Applicant:* Institut Jožef Stefan (Ljubljana, Slovenia) (represented by: A. Bochon, lawyer)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- declare the action admissible;
- annul the decision of 3 January 2023 adopted by the Review Committee of the European Commission rejecting the applicant's proposal with reference EDF-2021-MCBRN-R-CBRNDIM-101075036-PANDORA, submitted in the context of the call for proposals EDF-2021-MCBRN-R under the European Defence Fund's programme, on the grounds that the European Commission committed a manifest error of assessment, infringed the obligation to state reasons under Article 296 TFEU, infringed the principle of sound administration and infringed the right to be heard;

- order the European Commission to pay the applicant's legal costs and expenses of this procedure.

### **Pleas in law and main arguments**

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging a manifest error of assessment:

- the General Court has the power to examine whether the exercise by the European Commission of its powers is vitiated by a manifest error of assessment;
- the defendant committed a manifest error of assessment of the five documents submitted as Annex 6 for the entire PANDORA consortium, including the Applicant, and therefore wrongly came to the conclusion of the incompleteness of the proposal and that it should be declared inadmissible for that reason

2. Second plea in law, alleging an infringement of the obligation to state reasons:

- under Article 296 TFEU, legal acts shall state the reasons on which they are based and shall refer to any proposals, initiatives, recommendations, requests or opinions required by the Treaties;
- the reasons provided in the contested decision are insufficient to allow the applicant to understand the defendant's reasoning. The contested decision stating the reasons for the rejection of the application is only made of three phrases to entirely reject a proposal;
- by failing to provide reasons in a clear and unequivocal fashion, the contested decision infringed Article 296 TFEU.

3. Third plea in law, alleging an infringement of the principle of sound administration:

- the rights guaranteed by the EU legal order in administrative procedures include, in particular, the principle of sound administration which entails the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case;
- under the principle of sound administration, the defendant, before adopting the contested decision, could have asked the applicant to provide further clarification. This is furthermore strengthened by the fact that, even if some clarification were needed, all the required documents have been submitted in duly time by the applicant;
- In accordance with the process described in its own guide for submissions, the defendant should have contacted the PANDORA consortium if the information provided in Annex 6 of the call for proposal was deemed insufficient;
- by failing to comply with its own guidelines, the defendant undoubtedly breached the principle of sound administration.

4. Fourth plea in law, alleging a violation of the right to be heard:

- the right to be heard arises from the old general principle of EU law according to which a person whose interests are perceptibly affected by a decision taken by a public authority must be given the opportunity to make his point of view known;
- in the present case, the contested decision raises the question about the violation of the right to be heard. Indeed, it is only with the contested decision that the applicant was able to partially understand that the alleged issue at stake was the lack of details provided in Annex 6 of the call for proposal. The contested decision was however not eligible for an admissibility review, which did not allow the applicant to defend itself;
- by ignoring its own guidelines concerning Annex 6 of the call for proposal as mentioned above and misusing the review process, the contested decision infringed the applicant's right to be heard.