

Contested decision: Decision of the First Board of Appeal of EUIPO of 2 June 2023 in Case R 1463/2022-1

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to bear its own costs and to pay those incurred by the applicant, including those incurred for the purposes of the proceedings before the Cancellation Division and the First Board of Appeal of EUIPO;
- order any intervener to bear its own costs.

Pleas in law

- Insufficient assessment of genuine use and implications for bad faith assessment;
- Misinterpretation of evidence pertaining to cessation of use;
- Disregard for proprietor's discontinuation of use and implication for bad faith assessment.

Action brought on 7 August 2023 — ePlus v EUIPO — Telefónica Germany (E-Plus)

(Case T-463/23)

(2023/C 338/43)

Language in which the application was lodged: English

Parties

Applicant: ePlus Inc. (Herndon, Virginia, United States) (represented by: A. Mottet, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Telefónica Germany GmbH & Co. OHG (Munich, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: European Union word mark E-Plus — European Union trade mark No 17 781 791

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 2 June 2023 in Case R 951/2022-1

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to bear its own costs and to pay those incurred by the applicant, including those incurred for the purposes of the proceedings before the Cancellation Division and the First Board of Appeal of EUIPO;
- order any intervener to bear its own costs.

Pleas in law

- Insufficient assessment of genuine use and implications for bad faith assessment;
- Misinterpretation of evidence pertaining to cessation of use;
- Disregard for proprietor's discontinuation of use and implication for bad faith assessment.

Action brought on 31 July 2023 — DZ Bank v SRB**(Case T-477/23)**

(2023/C 338/44)

*Language of the case: German***Parties**

Applicant: DZ Bank AG Deutsche Zentral-Genossenschaftsbank, Frankfurt am Main (Frankfurt am Main, Germany) (represented by: H. Berger, M. Weber and D. Schoo, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

- annul the joint decision of 6 April 2023 (RC/JD/2022/22) determining the minimum requirement for own funds and eligible liabilities;
- order the SRB to pay the costs.

In the alternative, in the event that the Court takes the view that the contested decision is legally non-existent as a result of the use of the incorrect official language by the SRB and the action for annulment would therefore be inadmissible on the ground that it would be devoid of purpose, the applicant claims that the Court should:

- declare that the contested decision is legally non-existent;
- order the SRB to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the joint decision infringes Article 81(1) of Regulation (EU) No 806/2014⁽¹⁾ in conjunction with Article 3 of Regulation No 1,⁽²⁾ since it is not worded in German, which is the official language chosen by the applicant.
2. Second plea in law, alleging that the joint decision infringes Article 12d(8) of Regulation (EU) No 806/2014 and the second paragraph of Article 296 TFEU, since it does not contain a comprehensive and sufficiently detailed and specific statement of reasons.
3. Third plea in law, alleging that the joint decision infringes the fourth subparagraph of Article 12d(3) in conjunction with Article 27(7)(a) of Regulation (EU) No 806/2014, since it determines the minimum requirements for own funds and eligible liabilities as including liabilities from pass-through promotional loans.
4. Fourth plea in law, alleging that the joint decision infringes Article 12c(4) of Regulation (EU) No 806/2014, since it determines and provides the minimum requirements for own funds and eligible liabilities as including liabilities financed through pass-through promotional loans, the minimum requirements for own funds and eligible liabilities, at least in so far as they are excessive on account of the incorrect inclusion of liabilities from pass-through promotional loans, must be met by subordinated instruments.