

- declare the proposed evidence admissible;
- accept that evidence, and annul and declare inapplicable the decision of the Second Board of Appeal of OHIM of 5 December 2011 and, consequently, allow the registration of Community trade mark No 7 440 407 'R' for the goods in Class 25 in respect of which registration was originally sought, and those in Class 35 in respect of which registration has been refused;
- order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant.

Community trade mark concerned: figurative mark 'R' for goods and services in Classes 25, 35 and 41 (application No 7440407).

Proprietor of the mark or sign cited in the opposition proceedings: Ajuntament de Roses.

Mark or sign cited in opposition: Spanish figurative mark No 2593913 for goods and services in Classes 6, 9, 16, 25 and 35.

Decision of the Opposition Division: opposition upheld for some of the goods and services against which it was brought, in Classes 25 and 35, and application rejected in respect of those goods.

Decision of the Board of Appeal: action dismissed.

Pleas in law: Erroneous application of Article 8(1)(b) of Regulation No 207/2009 since there is no likelihood of confusion between the conflicting signs.

Action brought on 23 February 2012 — Flying Holding and Others v Commission

(Case T-91/12)

(2012/C 126/40)

Language of the case: French

Parties

Applicants: Flying Holding NV (Antwerpen-Wilrijk, Belgium); Flying Group Lux SA (Luxembourg, Luxembourg); and Flying Service NV (Antwerpen-Deurne, Belgium) (represented by: C. Doutrelepon and V. Chapoulaud, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul the decisions of the European Commission of 15 December 2011 and 17 January 2012;

- order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

By this action, the applicants seek the annulment of the Commission's decisions rejecting their application to participate in a restricted invitation-to-tender procedure concerning the provision of non-scheduled passenger transport services by air and chartered air-taxi service. ⁽¹⁾

In support of the action, the applicants rely on five pleas in law.

1. First plea in law, alleging failure to state or failure sufficiently to state reasons, in so far as, in its second decision of 17 January 2012, the Commission failed either to examine or respond to the evidence sent to it by the applicants after the decision of 15 December 2011.
2. Second plea in law, alleging infringement of the rights of the defence, in so far as the Commission relied on information that it obtained from the Luxembourg authorities although that information had not been communicated to the applicants before the decision of 15 December 2011 was adopted.
3. Third plea in law, alleging infringement of the principle of sound administration, since, in the first decision, the Commission used documents without seeking the applicants' point of view on them and, by the second decision, upheld the first decision without responding to the new evidence provided by the applicants after the first decision.
4. Fourth plea in law, alleging infringement of the principle of proportionality, in so far as the Commission failed to adopt the least restrictive measure for the applicants by preventing them from participating in the restricted procedure for the award of a framework contract on the ground that information provided in relation to the Luxembourg company Flying Group was not accurate, sincere and complete, even though relevant information with a direct connection with the object of the contract was provided in due time.
5. Fifth plea in law, alleging infringement of Article 89 of the Financial Regulation ⁽²⁾ and Article 135 of the Regulation implementing the Financial Regulation, ⁽³⁾ in so far as the European Commission required the applicants to provide it with information about their Luxembourg company with no direct connection with the object of the contract, which relates only to air transport departing from Brussels.

⁽¹⁾ OJ 2011/S 192-312059.

⁽²⁾ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

⁽³⁾ Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).