

1. First plea in law, contesting the findings of the Commission's audit, as:

- The findings of the Commission's audit is contested based upon the report of an external and independent auditor, explicitly appointed by the applicant for this specific issue and for the assessment of the findings of the Commission's audit; and
- Subsidiary, it is alleged that there was abusive behaviour on the part of the Commission, thereby infringing the principle of good faith (Article 1134 of the Belgian and Luxembourg Civil Codes).

2. Second plea in law, contesting the application of the extrapolation process to the BSOLE Agreement, as:

- The Commission breached Article 17 of the General Conditions for eTEN Feasibility/Market Validation Contracts;
- The Commission breached Article 4.2.2.3. of the Guide Financial Issues relating to the Indirect Actions of the Sixth Framework Programmes of October 2003 and February 2005;
- There was breach of contract by the Commission (Article 1134 §1 of Belgian Civil Code); and
- The Commission breached the limitation period for proceeding under the European Law (see under Article 46 (ex Article 43) of the Protocol on the Statute of the Court of Justice of the European Union).

3. Third plea in law, alleging the unjustified freezing of the payments made in the framework of ATHENA and JUDAICA Agreements, part of the eCONTENTPLUS project, as:

- The freezing is not grounded on the basis of the contractual provisions of the ATHENA and JUDAICA Agreements;
- The freezing could not be justified under Articles 106.4 and 183 of the Commission Regulation No 2342/2002 ⁽¹⁾;
- Article 183 of the Commission Regulation No 2342/2002 is also not applicable;
- It is alleged that there was abusive behaviour on the part of the Commission regarding the unilateral and unjustified freezing of the payment of the Community Financial Contributions under Article 1134 of Civil Code; and
- The principle of '*exceptio non adimpleti contractus*' is also not applicable.

⁽¹⁾ 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)

Action brought on 29 May 2012 — CEDC International v OHIM — Underberg (Shape of a blade of grass in a bottle)

(Case T-235/12)

(2012/C 243/41)

Language in which the application was lodged: English

Parties

Applicant: CEDC International sp. z o.o. (Warsaw, Poland) (represented by: M. Siciarek, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Underberg AG (Dietlikon, Suisse)

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 March 2012 in case R 2506/2010-4;
- Order OHIM to bear the costs of the proceedings at hand.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark with the description 'the object of the trade mark is a greeny-brown blade of grass in a bottle, the length of the blade of grass is approximately three-quarters the height of the bottle', for goods in class 33 — Community trade mark application No 33266

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: French trade mark registration No 95588457 of the three-dimensional mark representing a bottle with a strand of grass for goods in class 33; German trade mark registration No 39848553; Polish trade mark registration No 62018; Polish trade mark registration No 62081 for goods in class 33; Polish trade mark registration No 85811 for goods in class 33; Japanese trade mark registration No 2092826 for goods in class 28; French trade mark registration No 98746752 of the three-dimensional mark representing a bottle with a strand of grass for goods in class 33; Non-registered trade mark used in the course of trade in Germany in connection with 'vodka'

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law:

- Infringement of the principle of legality;
- Infringement of Article 15(1)(a) of Council Regulation No 207/2009 and Rule 22(3) of Commission Regulation No 2868/95 and consequently also Articles 8(1)(a), 42(2) and (3) of Council Regulation No 207/2009.

Action brought on 29 May 2012 — Airbus v OHIM (NEO)

(Case T-236/12)

(2012/C 243/42)

Language of the case: English

Parties

Applicant: Airbus SAS (France) (represented by: G. Würtenberger and R. Kunze, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 February 2012 in case R 1387/2011-1;
- Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'NEO' for goods and services in classes 7, 12, and 39 — Community trade mark application No 9624974

Decision of the Examiner: Partially refused to register the community trade mark application

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law:

- Infringement of Articles 64(1) and 59 of Council Regulation No 207/2009;
- Infringement of Articles 7(1)(b), 7(1)(c) and 7(2) of Council Regulation No 207/2009; and

— Infringement of Articles 75 and 76 of Council Regulation No 207/2009.

Action brought on 4 June 2012 — Gamesa Eólica v OHIM — Enercon (horizontal combination of green colours)

(Case T-245/12)

(2012/C 243/43)

Language in which the application was lodged: English

Parties

Applicant(s): Gamesa Eólica, SL (Sarriguren, Spain) (represented by: E. Armijo Chávarri and A. Sanz Cerralbo, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Enercon GmbH (Aurich, Germany)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 March 2012 in case R 260/2011-1;
- Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark representing a horizontal combination of green colours, for goods in class 7 — Community trade mark registration No 2346542

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

Applicant for the declaration of invalidity of the Community trade mark: The applicant

Grounds for the application for a declaration of invalidity: The party requesting the declaration of invalidity based its request on Article 52(1)(a) and on Article 52(1)(b) of Council Regulation (EC) No 207/2009

Decision of the Cancellation Division: Declared the Community trade mark invalid

Decision of the Board of Appeal: Annulled the contested decision and rejected the request for a declaration of invalidity