

4. Fourth plea in law, alleging that the applicants were not granted access to key documents that formed the basis of the Commission Regulation (EU) No 348/2013 and therefore the defendant infringed the applicants' rights of defence and principles of sound administration and excellence of scientific advice.

Action brought on 9 July 2013 — Menelaus/OHIM — Garcia Mahiques (VIGOR)

(Case T-361/13)

(2013/C 260/82)

Language in which the application was lodged: English

Parties

Applicant: Menelaus BV (Amsterdam, Netherlands) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

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

Other party to the proceedings before the Board of Appeal: V. Garcia Mahiques (Jesus Pobre, Spain), F. Garcia Mahiques (Jesus Pobre, Spain)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of defendant's Second Board of Appeal of 23 April 2013, in Case R 88/2012-2, to the extent that it annulled the decision of the Office's Cancellation Division of 11 November 2011 in Case 5061;
- Dismiss the appeal of the other party against the decision of the Cancellation Division of 10 November 2011 in Case C 5061;
- Order the defendant to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal
- In case the other party intervenes in this case, order Mr Vicente Garcia Mathiques and Mr Felipe Garcia Mahiques to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'VIGOR'— Community trade mark registration No 4 386 371

Proprietor of the Community trade mark: The applicant

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

Grounds for the application for a declaration of invalidity: The grounds of the request for a declaration of invalidity were those laid down in Article 8(1)(b), in conjunction with Article 53(1)(a) of Council Regulation No 207/2009

Decision of the Cancellation Division: Rejected the request for invalidity

Decision of the Board of Appeal: Upheld the appeal in part and annulled the contested decision to the extent that it rejected the application for invalidity as regards certain goods in class 21 and dismissed the appeal for the remainder

Pleas in law: Infringement of Rules 22(4) and Rules 79 to 82 of Commission Regulation No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (CTMR); Article 57(2) CTMR in conjunction with Article 15 (1)(a) CTMR; Article 57(2) CTMR in conjunction with Article 15(1)(a) CTMR and Article 75 CTMR; Article 56(1)(b) in conjunction with Article 41(1) CTMR; and Article 57(2) and (3) and Article 76(2) in conjunction with Rules 40 and 22 CTMR.

Action brought on 12 July 2013 — Mocek et Wenta/OHIM — Lacoste (KAJMAN)

(Case T-364/13)

(2013/C 260/83)

Language in which the application was lodged: English

Parties

Applicants: Eugenia Mocek (Chojnice, Poland) and Jadwiga Wenta (Chojnice, Poland) (represented by: K. Grala, lawyer)

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

Other party to the proceedings before the Board of Appeal: Lacoste SA (Paris, France)

Form of order sought

The applicants claim that the Court should:

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 May 2013 in Case R 2466/2010-4 and grant protection to the trade mark applied for for all the goods covered by the application;

— Order the defendant to bear the costs of the proceedings before the Court, including the expenses of the applicant, as well as the necessary costs incurred by the applicant in connection with the proceedings before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicants

Community trade mark concerned: The figurative mark claiming the colours green, white and grey containing the word element 'KAJMAN' placed between the back and the head of a crocodile for goods and services in classes 18, 20, 22, 25 and 36 — Community trade mark registration No 5 686 845

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Community trade mark of the figurative mark in black and white presenting a crocodile and the word mark 'CROCODILE' for goods and services in classes 16, 18, 20, 24, 25 and 36

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

Decision of the Board of Appeal: Annulled the contested decision insofar as the opposition was rejected for certain goods in classes 18 and 25, and rejected the contested Community trade mark application for these goods

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009.

Action brought on 15 July 2013 — Republic of Poland v European Commission

(Case T-367/13)

(2013/C 260/84)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Commission Implementing Decision 2013/214/EU of 2 May 2013 (notified under document C(2013) 2436) on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), ⁽¹⁾ in so far as it excludes from European Union financing the amounts

of EUR 8 292 783,94 and EUR 71 610 559,39 in expenditure incurred by the payment agency accredited by the Republic of Poland;

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

Pleas in law and main arguments

In support of its action the applicant raises three pleas in law.

1. The first plea in law concerns a breach of the first subparagraph of Article 7(4) of Regulation (EC) No 1258/1999 and of Article 31(1) of Regulation (EC) No 1290/2005 by reason of the application of a financial correction based on erroneous determinations of fact and a misinterpretation of law, notwithstanding the fact that the expenditure was effected by the Polish authorities in compliance with the provisions of European Union law

In the context of this plea in law, the applicant expresses the view that the correction applied was, in the light of the position taken by the Commission, attributable to five alleged failings in the completion of the measure relating to 'Support for semi-subsistence farms'. The first failing concerned a breach of the alleged requirement that the beneficiary should provide at least 50 % of the funds for supporting restructuring activities. The second failing related to non-performance of cross-control of farm animals in the context of the administrative monitoring of the initial request in regard to the correctness of the economic size unit (ESU) indicated by the farmer. The third failing related to a breach of an alleged requirement that an on-site inspection be effected in the first year in which the programme is carried out. The fourth failing, in the view of the Commission, lay in the absence of an appropriate connection between intermediate objectives and agricultural requirements. By contrast, the fifth failing concerned a breach of the alleged requirement that a quantitative definition of intermediate objectives be provided. The applicant takes issue with the Commission's interpretation of the law and its determination of the facts in relation to each of the alleged failings mentioned above.

2. The second plea in law concerns a breach of essential procedural requirements by reason of the application of a financial correction method which was flagrantly at variance with the fourth subparagraph of Article 7(4) of Regulation (EC) No 1258/1999 and Article 31(2) of Regulation (EC) No 1290/2005, together with Guidelines No VI/5330/97

The applicant submits in this regard that the Commission adopted a correction method that is contrary to European Union law and also at variance with Guidelines No VI/5330/97. Furthermore, the applicant believes that the bilateral procedure did not make it possible for the Polish authorities to carry out any kind of verification of the appraisal of the established incompatibilities, as it was only after the bilateral procedure had been completed that the Commission took steps to conclude the appraisal. On that basis, the applicant submits that the financial correction was applied by the Commission in a manner which seriously breached the procedure for clearing the accounts.