

By the second plea, the applicant asserts that the contested decision is vitiated by a failure to state reasons, in so far as it does not make it possible to understand the reasons which led the defendant to adopt such a measure, or the legal basis on which it is founded or the reason for which the tender procedure was partially annulled (that is, in respect of lot 2 only).

In addition to the annulment of the decision of 31 January 2007, the applicant claims compensation for all the damage it has suffered as a result of that decision.

⁽¹⁾ Contract notice: 'European Parliament web television channel' (OJ 2006 S 87-091412).

⁽²⁾ Case T-383/06 *Icuna.Com v Parliament*, OJ 2007 C 20, p. 31.

⁽³⁾ 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).

Action brought on 12 March 2007 — Federal Republic of Germany v Commission

(Case T-74/07)

(2007/C 95/108)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: M. Lumme and C. Blaschke, assisted by C. von Donat, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annulment of Commission Decision C(2006) 7271 final of 27 December 2006 on the reduction of the period of the financial contribution of the European Regional Development Fund granted by Commission Decision C(95) 2271 to the Operational Programme for North-Rhine Westphalia under the Community initiative INTERREG II in the Saarland, Lorraine and Western Palatinate regions in Germany,

— order the Commission to pay the costs.

Pleas in law and main arguments

By the contested decision, the Commission reduced the period of the contribution of the European Regional Development Fund to the Operational Programme for North-Rhine Westphalia under the Community initiative INTERREG II in the Saarland, Lorraine and Western Palatinate regions.

In support of its application, the applicant alleges infringement of Article 24(2) of Regulation No 4253/88 ⁽¹⁾, on the ground that it contains no provisions allowing for a reduction of that

kind. It argues in particular that the deviations from the indicative financing plan do not represent a significant alteration of the plan. The applicant claims that, even if the plan were to have been significantly altered, the Commission should agree to that alteration.

In addition, the applicant maintains that insufficient reasons were given for the reduction. In particular, it claims that there is no justification for the failure to apply the rule of flexibility in the 'Guidelines on the financial closure of operational measures (1994 — 1999) of the structural funds' (SEC(1999) 1316).

If it were to be accepted that provisions allowing a reduction exist, the applicant argues that defendant failed to exercise the discretion afforded to it in relation to the specific programme. According to the applicant, the Commission should have considered whether a reduction in the European Regional Development Fund contribution appeared reasonable.

Lastly, the applicant claims that there was an infringement of the principle of partnership.

⁽¹⁾ Council Regulation (EC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).

Action brought on 8 March 2007 — IXI Mobile v OHIM — Klein (IXI)

(Case T-78/07)

(2007/C 95/109)

Language in which the application was lodged: English

Parties

Applicant: IXI Mobile, Inc (Redwood City, United States) (represented by: S. Malynicz, Barrister)

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

Other party to the proceedings before the Board of Appeal: Jochen und Eckhard Klein GbR (Olching, Germany)

Form of order sought

— The decision of the Second Board of Appeal dated 11 January 2007 in Case R 796/2006-2 dismissing the appeal shall be annulled;

— the Office and the other party shall bear their own costs and pay those of the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'IXI' for goods in class 9 — application No 723 140

Proprietor of the mark or sign cited in the opposition proceedings: Jochen und Eckhard Klein GbR

Mark or sign cited: The Community word mark 'ixi' for goods in class 9

Decision of the Opposition Division: Opposition upheld for all the contested goods

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: The opponent did not adduce evidence of similarity between the respective goods; the Board of Appeal took an unduly broad view of the scope of protection of the earlier mark and failed to properly analyse the relevant factors governing the assessment of similarity of the respective goods. Furthermore, the Board of Appeal took the reasons for the applicant to select its mark into consideration, which the applicant submits is an irrelevant consideration.

Action brought on 9 March 2007 — SHS Polar Sistemas Informáticos v OHIM — Polaris Software Lab (POLARIS)

(Case T-79/07)

(2007/C 95/110)

Language in which the application was lodged: English

Parties

Applicant: SHS Polar Sistemas Informáticos, SL (Madrid, Spain) (represented by: C. Hernández Hernández, lawyer)

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

Other party to the proceedings before the Board of Appeal: Polaris Software Lab Ltd (Chennai, India)

Form of order sought

- That the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market dated 8 January 2007 in Case R 658/2006-2 be annulled;
- that OHIM bears its own cost and pays those incurred by the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: Polaris Software Lab Ltd

Community trade mark concerned: The figurative mark 'POLARIS' for goods and services in classes 9 and 42 — application No 3 267 713

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

Mark or sign cited: The Community word mark 'POLAR' for goods and services in classes 9, 38 and 42

Decision of the Opposition Division: Opposition upheld for all the contested goods in class 9

Decision of the Board of Appeal: Annulment of the Opposition Division's decision

Pleas in law: Violation of Article 8(1)(b) of Council Regulation No 40/94 as i) the earlier trade mark can be applied to software destined to a non-specialist consumer, which could give rise to a confusion, ii) the small visual and phonetic differences between the two conflicting trade marks do not suffice to avoid a likelihood of confusion and iii) both marks are connected to the same meaning.

Action brought on 15 March 2007 — JanSport Apparel v OHIM (BUILT TO RESIST)

(Case T-80/07)

(2007/C 95/111)

Language of the case: English

Parties

Applicant: JanSport Apparel Corp. (Wilmington, USA) (represented by: C. Bercial Arias, C. Casalonga, K. Dimidjian-Lecompte, lawyers)

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

Form of order sought

- Annul the contested decision R 1090/2006-2 of the Second Board of Appeal, dated 12 January 2007, partially refusing the registration of CTM Application No 2937522 BUILT TO RESIST for the following goods: