Judgment of the General Court of 23 November 2011 — bpost v Commission

(Case T-514/09) [1]

(Public service contracts — Tendering procedure of the PO — Daily transport and delivery of the Official Journal, books, other periodicals and publications — Rejection of the tender of a tenderer and decision to award the contract to another tenderer — Award criteria — Obligation to state the reasons on which the decision is based — Manifest error of assessment — Non-contractual liability)

(2012/C 13/22)

Language of the case: English

Parties

Applicant: bpost NV van publiek recht, formerly De Post NV van publiek recht (Brussels, Belgium) (represented by: R. Martens, B. Schutyser and A. Van Vaerenbergh, lawyers)

Defendant: European Commission (represented by: E. Manhaeve and N. Bambara, Agents, assisted by P. Wytinck, lawyer)

Re:

Application, first, for the annulment of the decision of the Publications Office of the European Union, communicated by letter of 17 December 2009, to reject the tender submitted by the applicant under invitation to tender No 10234 'Daily transport and delivery of the Official Journal, books, other periodicals and publications' (OJ 2009/S 176-253034) and award the contract to the successful tenderer, and, second, for damages.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders bpost NV van publiek recht to pay the costs, including those relating to the interlocutory proceedings.*

[1] OJ C 51, 27.2.2010.

Judgment of the General Court of 23 November 2011 — Geemarc Telecom v OHIM — Audioline (AMPLIDECT)

(Case T-59/10) [1]

(Community trade mark — Invalidity proceedings — Community word mark AMPLIDECT — Absolute grounds for refusal — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 — Descriptive character — No distinctive character — Acquisition of distinctive character through use — Evidence)

(2012/C 13/23)

Language of the case: English

Parties

Applicant: Geemarc Telecom International Ltd (Wanchai, Hong Kong) (represented by: G. Farrington, Solicitor)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Geroulakos, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Audioline GmbH (Neuss, Germany) (represented by: U. Blumenröder, P. Lübbe and B. Allekotte, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 20 November 2009 (Case R 913/2009-2), relating to invalidity proceedings between Audioline GmbH and Geemarc Telecom International Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Geemarc Telecom International Ltd to pay the costs.*

[1] OJ C 100, 17.4.2010.

Judgment of the General Court of 24 November 2011 — Saupiquet v Commission

(Case T-131/10) [1]

(Customs duty — Repayment of import duties — Canned tuna originating in Thailand — Tariff quota — Opening date — Sunday — Exhaustion of quota — Article 239 of the Community Customs Code — Articles 308a to 308c of Regulation (EEC) No 2454/93 — Regulation (EC) No 975/2003)

(2012/C 13/24)

Language of the case: French

Parties

Applicant: Saupiquet (Courbevoie, France) (represented by: R. Ledru, lawyer)

Defendant: European Commission (represented by: B.-R. Killmann and L. Bouyon, Agents)

Re:

Application for annulment of Commission Decision C(2009) 10005 final of 16 December 2009 finding that the repayment to the applicant of import duties on cans of tuna originating in Thailand is not justified.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Saupiquet to pay the costs.*

(1) OJ C 148, 5.6.2010.

Judgment of the General Court of 23 November 2011 — Monster Cable Products v OHIM — Live Nation (Music) UK (MONSTER ROCK)

(Case T-216/10) (1)

(Community trade mark — Opposition proceedings — Application for Community word mark MONSTER ROCK — Earlier national mark MONSTERS OF ROCK — Relative ground for refusal — Likelihood of confusion — Similarity of the goods — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2012/C 13/25)

Language of the case: English

Parties

Applicant: Monster Cable Products, Inc. (Brisbane, California, United States) (represented by: W. Baron von der Osten-Sacken, O. Günzel and A. Wenninger-Lenz, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: R. Pethke, Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Live Nation (Music) UK Ltd (London, United Kingdom) (represented by: S. Malynicz, Barrister, S. Britton and J. Summers, Solicitors)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 24 February 2010 (Case R 216/2009-1), concerning opposition proceedings between Live Nation (Music) UK Ltd and Monster Cable Products, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Monster Cable Products, Inc. to pay the costs.*

(1) OJ C 195, 17.7.2010.

Judgment of the General Court of 22 November 2011 — mPAY24 v OHIM — Ultra (MPAY24)

(Case T-275/10) (1)

(Community trade mark — Invalidity proceedings — Community word mark MPAY24 — Absolute grounds for refusal — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 — Correction of the decision by the Board of Appeal — Non-existent act — Rule 53 of Regulation (EC) No 2868/95)

(2012/C 13/26)

Language of the case: English

Parties

Applicant: mPAY24 GmbH (Vienna, Austria) (represented by: H.-G. Zeiner and S. Di Natale, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM: Ultra d.o.o. Proizvodnja elektronskih naprav (Zagorje ob Savi, Slovenia)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 22 March 2010 (Case R 1102/2008-1) concerning invalidity proceedings between Ultra d.o.o. Proizvodnja elektronskih naprav and mPAY24 GmbH.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 22 March 2010 (Case R 1102/2008-1);*

2. *Orders OHIM to pay the costs.*

(1) OJ C 234, 28.8.2010.

Judgment of the General Court of 22 November 2011 — Sports Warehouse v OHIM (TENNIS WAREHOUSE)

(Case T-290/10) (1)

(Community trade mark — Application for Community word mark TENNIS WAREHOUSE — Absolute ground for refusal — Descriptive character — Distinctive character — Obligation to state reasons — Article 7(1)(b) and (c) and Article 75 of Regulation (EC) No 207/2009)

(2012/C 13/27)

Language of the case: German

Parties

Applicant: Sports Warehouse GmbH (Schutterwald, Germany) (represented by: M. Douglas, lawyer)