

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the figurative mark, containing the word element 'ancotel', for services in Classes 35 and 38 — Community trade mark application No 3 314 424

Proprietor of the mark or sign cited in the opposition proceedings: Acotel SpA

Mark or sign cited in opposition: the national and Community figurative mark, containing the word element 'ACOTEL', for goods and services in Classes 9 and 38

Decision of the Opposition Division: the opposition was upheld in part

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 8 October 2012 — Koscher + Würtz v OHIM — Kirchner & Wilhelm (KW SURGICAL INSTRUMENTS)

(Case T-445/12)

(2012/C 379/45)

Language in which the application was lodged: German

Parties

Applicant: Koscher + Würtz GmbH (Spaichingen, Germany) (represented by: P. Mes, C. Graf von der Groeben, G. Rother, J. Bühling, A. Verhauwen, J. Künzel, D. Jestaedt, M. Bergermann, J. Vogtmeier and A. Kramer, lawyers)

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

Other party to the proceedings before the Board of Appeal: Kirchner & Wilhelm GmbH + Co (Asperg, Germany)

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 6 August 2012 in Case R 1675/2011-4;

— order the defendant to pay the costs of the proceedings, including the costs incurred in the appeal proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Koscher + Würtz GmbH

Community trade mark concerned: International registration with protection in respect of the European Union of a figurative mark containing the word element 'KW SURGICAL ELEMENTS' for goods in Class 10 — International registration with protection in respect of the European Union No W 968 722

Proprietor of the mark or sign cited in the opposition proceedings: Kirchner & Wilhelm GmbH + Co

Mark or sign cited in opposition: National word mark 'Ka We' for goods in Class 10

Decision of the Opposition Division: Opposition refused

Decision of the Board of Appeal: Appeal allowed and protection denied in respect of the trade mark registration

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

Action brought on 10 October 2012 — Visa Europe v Commission

(Case T-447/12)

(2012/C 379/46)

Language of the case: English

Parties

Applicant: Visa Europe Ltd (London, United Kingdom) (represented by: A. Renshaw and J. Aitken, Solicitors)

Defendant: European Commission

Form of order sought

The applicant claim that the Court should:

— Annul the Commission's decision of 31 July 2012 given in Case COMP/D1/39398 — *Visa MIF*, insofar as it rejects Visa Europe's request to modify the debit multilateral interchange fee (MIF) cap made legally binding by the Commission's decision of 8 December 2010; and

— Order the defendant to pay the costs of the present proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging that

— the Commission breached Art. 41 of the Charter of Fundamental Rights of the European Union, Visa Europe's rights of defence and the principle of sound administration by not providing Visa Europe with the opportunity to effectively make known its views on the relevant facts and on the Commission's objections regarding the alleged shortcomings in the economic study submitted by Visa Europe before definitively rejecting Visa Europe's request to modify the MIF cap.

2. Second plea in law, alleging that

— the Commission breached Art. 9(2)(a) of Regulation 1/2003⁽¹⁾, the principle of sound administration and Art. 296 TFEU by not comparing the economic study submitted by Visa Europe with the studies previously used to calculate the MIF cap and by relying on irrelevant considerations when rejecting Visa Europe's request to modify the MIF cap.

3. Third plea in law, alleging that

— the Commission committed a manifest error of assessment. It rejected evidence submitted by Visa Europe on the basis of flawed considerations, as well as on the basis of objections inconsistent with the Commission's own precedents. Furthermore, the Commission failed to appreciate that its objections, even if they were correct, would nevertheless fail to justify the refusal to modify the MIF cap.

⁽¹⁾ Council Regulation No 1/2003 on the implementation of the rules on competition laid down in Articles [101] and [102] of the [TFEU] (OJ L 1, p. 1)

Action brought on 10 October 2012 — Davril v Council and Commission

(Case T-448/12)

(2012/C 379/47)

Language of the case: French

Parties

Applicant: Philippe Davril (Épargnes, France) (represented by: C.-É. Gudin, lawyer)

Defendant: European Commission and Council of the European Union

Form of order sought

— Award full compensation for the damage sustained by virtue of the monetary penalties imposed, that is to say, the sum of EUR 174 900;

— Award full compensation of the non-material damage sustained by him, that is to say, the sum of EUR 100 000;

— Order the Council and the Commission to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on pleas in law which are in essence identical or similar to those relied upon in Cases T-195/11 *Cahier and Others v Council and Commission*⁽¹⁾ and T-458/11 *Riche v Council and Commission*.⁽²⁾

⁽¹⁾ OJ 2011 C 173, p. 14.

⁽²⁾ OJ 2011 C 298, p. 28.

Action brought on 17 October 2012 — British Telecommunications v Commission

(Case T-456/12)

(2012/C 379/48)

Language of the case: English

Parties

Applicant: British Telecommunications plc (London, United Kingdom) (represented by: J. Rivas Andrés and G. van de Walle de Ghelcke, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the Decision of the European Commission of 12 June 2012 given in State Aid Case SA.33540 (2012/N) — United Kingdom City of Birmingham — Digital District NGA Network; and

— Order the defendant to pay the costs incurred by the present action.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law.