

**Details of the proceedings before EUIPO**

*Proprietor of the trade mark at issue:* Applicant

*Trade mark at issue:* EU word mark 'VIPER' — EU trade mark No 3 871 101

*Procedure before EUIPO:* Proceedings for a declaration of invalidity

*Contested decision:* Decision of the First Board of Appeal of EUIPO of 1 December 2016 in Case R 554/2016-1

**Form of order sought**

The applicant claims that the Court should:

- annul the decisions of the Cancellation Division and of the First Board of Appeal and that the application by Mr. Busbridge be remitted to the Cancellation Division for the appropriate action;
- the Applicant also seeks an order for costs.

**Pleas in law**

- The Board of appeal was wrong in concluding that Mr Busbridge had proved use in relation to the goods covered by the UK registration (namely 'Sports cars');
- The evidence submitted by Mr Busbridge was wholly inadequate to prove use that was 'genuine' as required by Art. 57 (2) and (3) of Regulation n° 207/2009.

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**Action brought on 18 February 2017 — Jiangsu Seraphim Solar System v Commission**

**(Case T-110/17)**

(2017/C 121/63)

*Language of the case:* English

**Parties**

*Applicant:* Jiangsu Seraphim Solar System Co. Ltd (Changzhou, China) (represented by: Y. Melin, lawyer)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul Article 2 of Commission Implementing Regulation (EU) 2016/2146 of 7 December 2016 withdrawing the acceptance of the undertaking for two exporting producers under Implementing Decision 2013/707/EU confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures (JO 2016, L 333, p. 4), as far as the applicant is concerned; and
- order the Commission, and any intervener who may be allowed to support the Commission in the course of the proceedings, to bear the costs of the proceedings.

**Pleas in law and main arguments**

In support of the action, the applicant relies on one sole ground.

According to the applicant, the Commission breached Article 8(1), (9) and (10) and Article 10(5) of Regulation (EU) 2016/1036 <sup>(1)</sup>, and Article 13(1), (9) and (10) and Article 16(5) of Regulation (EU) 2016/1037 <sup>(2)</sup>, when it invalidated undertaking invoices and then directed customs to all duties, as if no valid undertaking invoices had been issued and communicated to customs at the time the goods were declared for release in free circulation.

The applicant bases this plea on a plea of illegality of Article 3(2) of Council Implementing Regulation (EU) No 1238/2013 <sup>(3)</sup>, and Article 2(2) of Council Implementing Regulation (EU) No 1239/2013 <sup>(4)</sup>, which give to the Commission the power to declare undertaking invoices invalid.

<sup>(1)</sup> Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21).

<sup>(2)</sup> Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ 2016, L 176, p. 55).

<sup>(3)</sup> Council Implementing Regulation (EU) No 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ 2013, L 325, p. 1).

<sup>(4)</sup> Regulation (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ 2013, L 325, p. 66).

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**Action brought on 20 February 2017 — Spiegel-Verlag Rudolf Augstein and Sauga v ECB**

**(Case T-116/17)**

(2017/C 121/64)

*Language of the case: German*

**Parties**

**Applicants:** Spiegel-Verlag Rudolf Augstein GmbH & Co. KG (Hamburg, Germany) and Michael Sauga (Berlin, Germany) (represented by: A. Koreng and T. Feldmann, lawyers)

**Defendant:** European Central Bank (ECB)

**Form of order sought**

The applicants claim that the Court should:

- annul the decision, notified by letter of 15 December 2016, of the Board of Directors of the European Central Bank, by which the applicants' request for access to the two European Central Bank documents 'The impact on government deficit and debt from off-market swaps. The Greek case' (SEC/GovC/X/10/88a) and 'The Titlos transaction and possible existence of similar transactions impacting on the euro area government debt or deficit levels' (SEC/GovC/X/10/88b) was rejected;
- order the European Central Bank to pay the costs.

**Pleas in law and main arguments**

In support of the action, the applicants rely on two pleas in law

1. First plea in law, alleging misapplication of the second indent of Article 4(1)(a) of Decision ECB/2004/3 <sup>(1)</sup>

The applicants claim that the ECB has failed to show in sufficient detail that disclosure of the documents concerned would undermine the protection of the public interest as regards the financial, monetary or economic policy of the European Union or of a Member State.

The risk of detriment to the public interest claimed by the ECB is, they submit, more than six years after the documents were drafted and after a fundamental change in the surrounding circumstances, no longer a matter giving rise to actual concern.