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COURT OF JUSTICE OF THE EUROPEAN UNION

(2010/C 288/01)

Last publication of the Court of Justice of the European Union in the *Official Journal of the European Union*

OJ C 274, 9.10.2010

Past publications

OJ C 260, 25.9.2010

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OJ C 195, 17.7.2010

These texts are available on:

EUR-Lex: http://eur-lex.europa.eu

GENERAL COURT

Election of the President of the General Court

(2010/C 288/02)

On 13 September 2010, the Judges of the General Court, in accordance with the provisions of Article 7 of the Rules of Procedure, elected Mr Marc Jaeger President of the General Court for the period from 13 September 2010 to 31 August 2013.

Elections of Presidents of Chambers

(2010/C 288/03)

On 15 September 2010, the General Court, in accordance with Article 15 of the Rules of Procedure, elected Mr Azizi, Mr Forwood, Mr Czúcz, Ms Pelikánová, Mr Papasavvas, Mr Moavero Milanesi, Mr Dittrich and Mr Truchot as Presidents of the Chambers composed of five Judges and the Chambers composed of three Judges for the period from 15 September 2010 to 31 August 2013.

Assignment of Judges to Chambers

(2010/C 288/04)

On 14 September 2010, the General Court decided to set up eight Chambers of five Judges and eight Chambers of three Judges for the period from 14 September 2010 to 31 August 2013 and, on 20 September 2010, decided to assign the Judges for the period from 20 September 2010 until the date of the taking up of his duties by the Bulgarian Judge as follows:

First Chamber (Extended Composition), sitting with five Judges:

Mr Azizi, President of the Chamber, Mr Vilaras, Ms Cremona, Ms Labucka and Mr Frimodt Nielsen, Judges.

First Chamber, sitting with three Judges:

Mr Azizi, President of the Chamber;

Ms Cremona, Judge;

Mr Frimodt Nielsen, Judge.

Second Chamber (Extended Composition), sitting with five Judges:

Mr Forwood, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Mr Prek, Mr Ciucă and Mr Schwarcz, Judges.

Second Chamber, sitting with three Judges:

Mr Forwood, President of the Chamber;

(a) Mr Dehousse and Mr Ciucă, Judges;

(b) Mr Dehousse and Mr Schwarcz, Judges;

(c) Mr Ciucă and Mr Schwarcz, Judges.

Third Chamber (Extended Composition), sitting with five Judges:

Mr Czúcz, President of the Chamber, Mr Vilaras, Ms Cremona, Ms Labucka and Mr Frimodt Nielsen, Judges.

Third Chamber, sitting with three Judges:

Mr Czúcz, President of the Chamber;

Mr Vilaras, Judge;

Ms Labucka, Judge.

Fourth Chamber (Extended Composition), sitting with five Judges:

Ms Pelikánová, President of the Chamber, Mr Vadapalas, Ms Jürimäe, Mr O'Higgins and Mr Van der Woude, Judges.

Fourth Chamber, sitting with three Judges:

Ms Pelikánová, President of the Chamber;

Ms Jürimäe, Judge;

Mr Van der Woude, Judge.

Fifth Chamber (Extended Composition), sitting with five Judges:

Mr Papasavvas, President of the Chamber, Mr Vadapalas, Ms Jürimäe, Mr O'Higgins and Mr Van der Woude, Judges.

Fifth Chamber, sitting with three Judges:

Mr Papasavvas, President of the Chamber;

Mr Vadapalas, Judge;

Mr O'Higgins, Judge.

Sixth Chamber (Extended Composition), sitting with five Judges:

Mr Moavero Milanesi, President of the Chamber, Ms Martins Ribeiro, Mr Wahl, Mr Soldevila Fragoso and Mr Kanninen, Judges.

Sixth Chamber, sitting with three Judges:

Mr Moavero Milanesi, President of the Chamber;

Mr Wahl, Judge;

Mr Soldevila Fragoso, Judge.

Seventh Chamber (Extended Composition), sitting with five Judges:

Mr Dittrich, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Mr Prek, Mr Ciucă and Mr Schwarcz, Judges.

Seventh Chamber, sitting with three Judges:

Mr Dittrich, President of the Chamber;

Ms Wiszniewska-Białecka, Judge;

Mr Prek, Judge.

Eighth Chamber (Extended Composition), sitting with five Judges:

Mr Truchot, President of the Chamber, Ms Martins Ribeiro, Mr Wahl, Mr Soldevila Fragoso and Mr Kanninen, Judges.

Eighth Chamber, sitting with three Judges:

Mr Truchot, President of the Chamber;

Ms Martins Ribeiro, Judge;

Mr Kanninen, Judge.

For the period from 20 September 2010 until the date of the taking up of his duties by the Bulgarian Judge, the Judges who will sit with the President of the Chamber of four Judges to make up the extended formation will be the other two Judges of the formation initially hearing the case, the fourth Judge of that Chamber and a Judge of the Chamber of three Judges which is not one of a pair of Chambers of three Judges required to provide additional Judges for each other for the purposes of making up an extended formation. The fifth Judge will be designated for one year in accordance with a rota in the order laid down in Article 6 of the Rules of Procedure of the General Court.

For the period from 20 September 2010 until the date of the taking up of his duties by the Bulgarian Judge, the Judges who will sit with the President of the Chamber of three Judges which is not one of a pair of Chambers of three Judges required to provide additional Judges for each other for the purposes of making up an extended formation will be, to make up the extended formation, the two Judges of the formation initially hearing the case and two Judges from the formation of four Judges designated according to the order laid down in Article 6 of the Rules of Procedure of the General Court.

Plenary session

(2010/C 288/05)

On 20 September 2010, in accordance with Article 32(1), second indent, of the Rules of Procedure, the General Court decided that if, following the designation of an Advocate-General under Article 17 of the Rules of Procedure, there is an even number of Judges in the General Court sitting in plenary session, the rota established in advance, applied during the period of three years for which the Presidents of the Chambers of five Judges are elected, according to which the President of the General Court designates the Judge who will not take part in the judgment of the case, is in the reverse order to that of the precedence of the Judges according to their seniority in office in accordance with Article 6 of the Rules of Procedure, unless the Judge so designated is the Judge-Rapporteur. In that latter case, the Judge immediately senior to him will be designated.

Composition of the Grand Chamber

(2010/C 288/06)

On 14 September 2010, the General Court decided that, for the period from 20 September 2010 to 31 August 2013, the thirteen Judges who make up the Grand Chamber, in accordance with Article 10(1) of the Rules of Procedure, are the President of the General Court, the seven Presidents of Chambers from the Chambers to which the case is not assigned and the Judges of the Chamber (Extended Composition) who would have had to sit in the case in question if it had been assigned to a Chamber of five Judges.

Appeal Chamber

(2010/C 288/07)

On 14 September 2010, the General Court decided that, for the period from 20 September 2010 to 31 August 2011, the Appeal Chamber will be composed of the President of the Court and, in rotation, two Presidents of Chambers.

The Judges who will sit with the President of the Appeal Chamber to make up the extended formation of five Judges will be the three Judges of the formation initially hearing the case and, in rotation, two Presidents of Chambers.

Criteria for assigning cases to Chambers

(2010/C 288/08)

On 20 September 2010, the General Court laid down the following criteria for the assignment of cases to the Chambers for the period from 20 September 2010 to 31 August 2011, in accordance with Article 12 of the Rules of Procedure:

1. Appeals against the decisions of the Civil Service Tribunal shall be assigned to the Appeal Chamber as soon as the application has been lodged and without prejudice to any subsequent application of Articles 14 and 51 of the Rules of Procedure.

2. Cases other than those referred to in paragraph 1 above shall be assigned to Chambers of three Judges as soon as the application has been lodged and without prejudice to any subsequent application of Articles 14 and 51 of the Rules of Procedure.

   Cases referred to in this paragraph shall be allocated to the Chambers in turn, in accordance with the date on which they are registered at the Registry, following three separate rotas:

   — for cases concerning application of the competition rules applicable to undertakings, the rules on State aid and the rules on trade protection measures;

   — for cases concerning intellectual property rights referred to in Article 130(1) of the Rules of Procedure;

   — for all other cases.

In applying those rotas, the Chamber composed of four Judges which is sitting with three Judges shall be taken into consideration twice at each third turn.

The President of the General Court may derogate from the rotas on the ground that cases are related or with a view to ensuring an even spread of the workload.

Designation of the Judge replacing the President as the Judge hearing applications for interim measures

(2010/C 288/09)

On 20 September 2010, the General Court decided, in accordance with Article 106 of the Rules of Procedure, to designate Judge Prek to replace the President of the General Court for the purpose of deciding applications for interim measures where the latter is absent or prevented from dealing with them, for the period from 20 September 2010 to 31 August 2011.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 8 September 2010 (reference for a preliminary ruling from the Verwaltungsgericht Köln (Germany)) — Winner Wetten GmbH v Mayor of Bergheim

(Case C-409/06) [1]

(Articles 43 EC and 49 EC — Freedom of establishment — Freedom to provide services — Organisation of bets on sporting competitions subject to a public monopoly at Land level — Decision of the Bundesverfassungsgericht finding the legislation for such a monopoly incompatible with the German Basic Law, but maintaining the legislation in force during a transitional period designed to allow it to be brought into conformity with the Basic Law — Principle of the primacy of Union law — Admissibility of, and possible conditions for, a transitional period of that type where the national legislation concerned also infringes Articles 43 EC and 49 EC)

(2010/C 288/10)

Language of the case: German

Referring court

Verwaltungsgericht Köln

Parties to the main proceedings

Applicant: Winner Wetten GmbH

Defendant: Mayor of Bergheim

Re:

Reference for a preliminary ruling — Verwaltungsgericht Köln — Interpretation of Arts 43 EC and 49 EC — National legislation, making the business of collecting, accepting, registering and transmitting bets subject to obtaining authorisation, declared unconstitutional by the Bundesverfassungsgericht — Direct effect and primacy of Community law — Temporal limitation on the effects of the judgment

Operative part of the judgment

By reason of the primacy of directly-applicable Union law, national legislation concerning a public monopoly on bets on sporting competitions which, according to the findings of a national court, comprises restrictions that are incompatible with the freedom of establishment and the freedom to provide services, because those restrictions do not contribute to limiting betting activities in a consistent and systematic manner, cannot continue to apply during a transitional period.

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[1] OJ C 326, 30.12.2006.

Judgment of the Court (First Chamber) of 2 September 2010 — European Commission v Scott SA, Département du Loiret, French Republic

(Case C-290/07 P) [1]

(Appeal — State aid — Preferential price for the purchase of developed land — Inquiry as to market value — Formal investigation procedure — Regulation (EC) No 659/1999 — Obligation to undertake a diligent and impartial examination — Scope of the Commission's power freely to assess value — Costs method — Scope of review by the Courts)

(2010/C 288/11)

Language of the case: English

Parties

Appellant: European Commission (represented by: J. Flett, acting as Agent)

Other parties to the proceedings: Scott SA (represented by: J. Lever QC, R. Griffith and M. Papadakis, Solicitors, and by P. Gardner and G. Peretz, Barristers), Département du Loiret (represented by: A. Carnelutti, avocat), French Republic (represented by: G. de Bergues, S. Seam and F. Million, acting as Agents)

Re:

Appeal against the judgment of the First Chamber of the Court of First Instance delivered on 29 March 2007 in Case T-366/00 *Scott SA* v *Commission of the European Communities* by which the Court annulled Article 2 of Commission Decision 2002/14/EC of 12 July 2000 on the State aid granted by France to Scott Paper SA/Kimberley-Clark (OJ 2000 L 12, p. 1) in so far as it concerns aid granted in the form of a preferential land price referred to in Article 1 of the decision

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 29 March 2007 in Case T-366/00 Scott v Commission.*

2. *Refers the case back to the General Court of the European Union.*

3. *Reserves the costs.*

([1]) OJ C 183, 4.8.2007.

Judgment of the Court (Grand Chamber) of 8 September 2010 (references for a preliminary ruling from the Verwaltungsgericht Gießen Verwaltungsgericht Stuttgart (Germany)) — Markus Stoß (C-316/07), Avalon Service-Online-Dienste GmbH (C-409/07), Olaf Amadeus Wilhelm Happel (C-410/07) Kulpa Automatenservice Asperg GmbH (C-358/07), SOBO Sport & Entertainment GmbH (C-359/07), Andreas Kunert (C-360/07) v Wetteraukreis (C-316/07, C-409/07, C-410/07), Land Baden Württemberg (C-358/07, C-359/07, C-360/07)

(Joined Cases C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07) ([1])

(Articles 43 EC and 49 EC — Freedom of establishment — Freedom to provide services — Organisation of bets on sporting competitions subject to a public monopoly at Land level — Objective of preventing incitement to squander money on gambling and combating gambling addiction — Proportionality — Restrictive measure to be genuinely aimed at reducing opportunities for gambling and limiting gambling activities in a consistent and systematic manner — Advertising emanating from the holder of the monopoly and encouraging participation in lotteries — Other games of chance capable of being offered by private operators — Expansion of the supply of other games of chance — Licence issued in another Member State — No mutual recognition obligation)

(2010/C 288/12)

Language of the case: English

Referring court

Verwaltungsgericht Gießen, Verwaltungsgericht Stuttgart

Parties to the main proceedings

Applicants: Markus Stoß (C-316/07), Avalon Service-Online-Dienste GmbH (C-409/07), Olaf Amadeus Wilhelm Happel (C-410/07), Kulpa Automatenservice Asperg GmbH (C-358/07), SOBO Sport & Entertainment GmbH (C-359/07), Andreas Kunert (C-360/07)

Defendants: Wetteraukreis (C-316/07, C-409/07, C-410/07), Land Baden Württemberg (C-358/07, C-359/07, C-360/07)

Re:

Reference for a preliminary ruling — Verwaltungsgericht Giessen — Interpretation of Articles 43 and 49 EC — National legislation which prohibits, on pain of criminal and administrative sanctions, the collection of bets on sporting events without authorisation from the competent authority but which renders it practically impossible, by virtue of the establishment of a State monopoly, to obtain that authorisation

Operative part of the judgment

1. *On a proper interpretation of Articles 43 EC and 49 EC:*

   (a) *in order to justify a public monopoly on bets on sporting competitions and lotteries, such as those at issue in the cases in the main proceedings, by an objective of preventing incitement to squander money on gambling and combating addiction to the latter, the national authorities concerned do not necessarily have to be able to produce a study establishing the proportionality of the said measure which is prior to the adoption of the latter;*

   (b) *a Member State's choice to use such a monopoly rather than a system authorising the business of private operators which would be permitted to carry on their business in the context of a non-exclusive legislative framework is capable of satisfying the requirement of proportionality, in so far as, as regards the objective concerning a high level of consumer protection, the establishment of the said monopoly is accompanied by a legislative framework suitable for ensuring that the holder of the said monopoly will in fact be able to pursue, in a consistent and systematic manner, such an objective by means of a supply that is quantitatively measured and qualitatively planned by reference to the said objective and subject to strict control by the public authorities;*

   (c) *the fact that the competent authorities of a Member State might be confronted with certain difficulties in ensuring compliance with such a monopoly by organisers of games and bets established outside that Member State, who, via the internet and in breach of the said monopoly, conclude bets with persons within the territorial area of the said authorities, is not capable, as such, of affecting the potential conformity of such a monopoly with the said provisions of the Treaty;*

(d) *in a situation where a national court finds, at the same time:*

— *that advertising measures emanating from the holder of such a monopoly and relating to other types of games of chance which it also offers are not limited to what is necessary in order to channel consumers towards the offer emanating from that holder by turning them away from other channels of unauthorised games, but are designed to encourage the propensity of consumers to gamble and to stimulate their active participation in the latter for purposes of maximising the anticipated revenue from such activities,*

— *that other types of games of chance may be exploited by private operators holding an authorisation, and*

— *that, in relation to other types of games of chance not covered by the said monopoly, and which, moreover, present a higher potential risk of addiction than the games subject to that monopoly, the competent authorities are conducting or tolerating policies of expanding supply, of such a kind as to develop and stimulate gaming activities, in particular with a view to maximising revenue from the latter,*

the said national court may legitimately be led to consider that such a monopoly is not suitable for guaranteeing achievement of the objective for which it was established, of preventing incitement to squander money on gambling and combating addiction to the latter, by contributing to reducing opportunities for gambling and limiting activities in that area in a consistent and systematic manner.

2. *On a proper interpretation of Articles 43 EC and 49 EC, in the current state of European Union law, the fact that an operator holds, in the Member State in which it is established, an authorisation permitting it to offer games of chance does not prevent another Member State, while complying with the requirements of European Union law, from making such a provider offering such services to consumers in its territory subject to the holding of an authorisation issued by its own authorities.*

(1) OJ C 269, 10.11.2007.
OJ C 283, 24.11.2007.

Judgment of the Court (Grand Chamber) of 8 September 2010 (reference for a preliminary ruling from the Schleswig Holsteinisches Verwaltungsgericht (Germany)) — Carmen Media Group Ltd v Land Schleswig-Holstein, Innenminister des Landes Schleswig-Holstein

(Case C-46/08) (1)

(Article 49 EC — Freedom to provide services — Holder of a licence issued in Gibraltar authorising the collection of bets on sporting competitions only abroad — Organisation of bets on sporting competitions subject to a public monopoly at Land level — Objective of preventing incitement to squander money on gambling and combating gambling addiction — Proportionality — Restrictive measure to be genuinely aimed at reducing opportunities for gambling and limiting gambling activities in a consistent and systematic manner — Other games of chance capable of being offered by private operators — Authorisation procedure — Discretion of the competent authority — Prohibition on offering games of chance via the internet — Transitional measures provisionally authorising such an offer by certain operators)

(2010/C 288/13)

Language of the case: German

Referring court

Schleswig-Holsteinisches Verwaltungsgericht

Parties to the main proceedings

Applicant: Carmen Media Group Ltd

Defendants: Land Schleswig-Holstein, Innenminister des Landes Schleswig-Holstein

Re:

Reference for a preliminary ruling — Schleswig-Holsteinisches Verwaltungsgericht — Interpretation of Art. 49 EC — National legislation establishing a State monopoly on the organisation of sporting bets and lotteries with a significant risk of dependency, making the grant of authorisations for the organisation of other games of chance subject to the discretion of the public authorities, and prohibiting the organisation of games of chance on the internet

Operative part of the judgment

1. *On a proper interpretation of Article 49 EC, an operator wishing to offer via the internet bets on sporting competitions in a Member State other than the one in which it is established does not cease*

to fall within the scope of the said provision solely because that operator does not have an authorisation permitting it to offer such bets to persons within the territory of the Member State in which it is established, but holds only an authorisation to offer those services to persons located outside that territory.

2. *On a proper interpretation of Article 49 EC, where a regional public monopoly on sporting bets and lotteries has been established with the objective of preventing incitement to squander money on gambling and of combating gambling addiction, and yet a national court establishes at the same time:*

— *that other types of games of chance may be exploited by private operators holding an authorisation; and*

— *that in relation to other games of chance which do not fall within the said monopoly and which, moreover, pose a higher risk of addiction than the games which are subject to that monopoly, the competent authorities pursue policies of expanding supply, of such a nature as to develop and stimulate gaming activities, in particular with a view to maximising revenue derived from the latter;*

that national court may legitimately be led to consider that such a monopoly is not suitable for ensuring the achievement of the objective for which it was established by contributing to reducing the opportunities for gambling and to limiting activities within that area in a consistent and systematic manner.

The fact that the games of chance subject to the said monopoly fall within the competence of the regional authorities, whereas those other types of games of chance fall within the competence of the federal authorities, is irrelevant in that respect.

3. *On a proper interpretation of Article 49 EC, where a system of prior administrative authorisation is established in a Member State as regards the supply of certain types of gambling, such a system, which derogates from the freedom to provide services guaranteed by Article 49 EC, is capable of satisfying the requirements of that latter provision only if it is based on criteria which are objective, non-discriminatory and known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion so that it is not used arbitrarily. Furthermore, any person affected by a restrictive measure based on such a derogation must have an effective judicial remedy available to them.*

4. *On a proper interpretation of Article 49 EC, national legislation prohibiting the organisation and intermediation of games of chance on the internet for the purposes of preventing the squandering of money on gambling, combating addiction to the latter and protecting young persons may, in principle, be regarded as suitable for pursuing such legitimate objectives, even if the offer of such games remains authorised through more traditional channels. The fact that such a prohibition is accompanied by a transitional measure such as that at issue in the main proceedings is not capable of depriving the said prohibition of that suitability.*

([1]) OJ C 128, 24.5.2008.

Judgment of the Court (Fourth Chamber) of 9 September 2010 (reference for a preliminary ruling from the Landesgericht Linz (Austria)) — Criminal proceedings against Ernst Engelmann

(Case C-64/08) ([1])

(Freedom to provide services — Freedom of establishment — National rules establishing a system of concessions for the operation of games of chance in casinos — Concessions obtainable solely by public limited companies established in national territory — All concessions granted without any competitive procedure)

(2010/C 288/14)

Language of the case: German

Referring court

Landesgericht Linz

Party in the main proceedings

Ernst Engelmann

Re:

Reference for a preliminary ruling — Landesgericht Linz — Interpretation of Articles 43 EC and 49 EC — National legislation prohibiting, on pain of criminal sanctions, the operation of games of chance in casinos without a concession granted by the competent authority, but restricting the possibility of obtaining such a concession, of a maximum duration of 15 years, to public limited companies established in national territory which do not have any branches abroad

Operative part of the judgment

1. *Article 43 EC must be interpreted as precluding legislation of a Member State under which games of chance may be operated in gaming establishments only by operators whose seat is in the territory of that Member State.*

2. *The obligation of transparency flowing from Articles 43 EC and 49 EC and from the principle of equal treatment and the prohibition of discrimination on grounds of nationality precludes the grant without any competitive procedure of all the concessions to operate gaming establishments in the territory of a Member State.*

([1]) OJ C 116, 9.5.2008.

Judgment of the Court (First Chamber) of 2 September 2010 — European Commission v Deutsche Post AG, Bundesverband Internationaler Express- und Kurierdienste eV, UPS Europe SA, Federal Republic of Germany

(Case C-399/08 P) ([1])

(Appeal — Article 87 EC — Aid granted by the Member States — Measures implemented by the Federal Republic of Germany for Deutsche Post AG — Article 86 EC — Services of general economic interest — Compensation for additional costs generated by a policy of selling below cost in the door-to-door parcel delivery sector — Existence of an economic advantage — Method used by the Commission to check — Burden of proof — Article 230 EC — Scope of the General Court's powers of judicial review)

(2010/C 288/15)

Language of the case: German

Parties

Appellant: European Commission (represented by: V. Kreuschitz, J. Flett and B. Martenczuk, acting as Agents)

Other parties to the proceedings: Deutsche Post AG (represented by: J. Sedemund, Rechtsanwalt), Bundesverband Internationaler Express- und Kurierdienste eV (represented by: R. Wojtek, Rechtsanwalt), UPS Europe SA (represented by: E. Henny, advocaat), Federal Republic of Germany (represented by: M. Lumma and B. Klein, acting as Agents)

Re:

Appeal against the judgment of the Court of First Instance (Third Chamber, Extended Composition) of 1 July 2008 in Case T-266/02 *Deutsche Post* v *Commission* annulling Commission Decision 2002/753/EC of 19 June 2002 on measures implemented by the Federal Republic of Germany for Deutsche Post AG (OJ 2002 L 247, p. 27) declaring the aid incompatible with the common market and ordering its recovery — Compensation of additional costs generated by a below-cost selling policy in the door-to-door parcel delivery sector — Infringement of Articles 86(2) EC and 87(1) EC, Article 230 EC and Article 36 of the Statute of the Court of Justice — Annulment without finding any specific error in the Commission's reasoning supporting the contested decision — Failure to state reasons as regards the alleged unlawfulness of the method used by the Commission to ascertain the existence of unlawful aid

Operative part of the judgment

The Court:

1. *Dismisses the main appeal and the cross-appeals;*

2. *Orders the European Commission to bear its own costs and to pay those incurred by Deutsche Post AG in connection with the main appeal;*

3. *Orders Bundesverband Internationaler Express- und Kurierdienste eV and UPS Europe SA to bear their own costs relating to the main appeal;*

4. *Orders Deutsche Post AG, Bundesverband Internationaler Express- und Kurierdienste eV and UPS Europe SA to bear their own costs relating to the cross-appeals;*

5. *Orders the Federal Republic of Germany to bear its own costs.*

([1]) OJ C 301, 22.11.2008.

Judgment of the Court (Second Chamber) of 2 September 2010 (reference for a preliminary ruling from the Simvoulio tis Epikrateas (Greece)) — Panagiotis I. Karanikolas, Valsamis Daravanis, Georgios Kouvoukliotis, Panagiotis Ntolou, Dimitrios Z. Parisis, Konstantinos Emmanouil, Ioannis Anasoglou, Pantelis A. Beis, Dimitrios Chatziandreou, Ioannis A. Zaragkoulias, Triantafillos K. Mavrogiannis, Sotirios Th. Liotakis, Vasileos Karampasis, Dimitrios Melissidis, Ioannis V. Kleovoulos, Dimitrios I. Patsakos, Theodoros Fournarakis, Dimitrios K. Dimitrakopoulos and Sinetairismos Paraktion Alieon Kavalas v Ipourgos Agrotikis Anaptixis kai Trofimon and Nomarkhiaki Aftodioikisi Dramas-Kavalas, Xanthis

(Case C-453/08) ([1])

(Common fisheries policy — Fisheries in the Mediterranean — Regulation (EC) No 1626/94 — Article 1(2) and (3) — Prohibition of the use of certain types of fishing net — Measures supplementary to or going beyond the minimum requirements of that regulation which were adopted before its entry into force — Conditions of validity)

(2010/C 288/16)

Language of the case: Greek

Referring court

Simvoulio tis Epikrateas

Parties to the main proceedings

Applicants: Panagiotis I. Karanikolas, Valsamis Daravanis, Georgios Kouvoukliotis, Panagiotis Ntolou, Dimitrios Z. Parisis, Konstantinos Emmanouil, Ioannis Anasoglou, Pantelis A. Beis, Dimitrios Chatziandreou, Ioannis A. Zaragkoulias, Triantafillos K. Mavrogiannis, Sotirios Th. Liotakis, Vasileos Karampasis, Dimitrios Melissidis, Ioannis V. Kleovoulos, Dimitrios I. Patsakos, Theodoros Fournarakis, Dimitrios K. Dimitrakopoulos and Sinetairismos Paraktion Alieon Kavalas

Defendants: Ipourgos Agrotikis Anaptixis kai Trofimon and Nomarkhiaki Aftodioikisi Dramas-Kavalas-Xanthis

Intervening parties: Alieftikos Agrotikos Sinetairismos gri-gri nomou Kavalas (MAKEDONIA), Panellinia Enosi Ploioktiton Mesis Alieias (PEPMA)

Re:

Reference for a preliminary ruling — Simvoulio tis Epikrateas — Interpretation of Articles 1(2), 2(3) and 3(1) of Council Regulation (EC) No 1626/94 of 27 June 1994 laying down certain technical measures for the conservation of fishery resources in the Mediterranean — Prohibition on the use of certain types of fishing net — Scope of the possibility, established by the regulation, for Member States to adopt measures that are supplementary or go beyond the minimum requirements of the regulation

Operative part of the judgment

Article 1(2) and Article 1(3) of Council Regulation (EC) No 1626/94 of 27 June 1994 laying down certain technical measures for the conservation of fishery resources in the Mediterranean, as amended by Council Regulation (EC) No 2550/2000 of 17 November 2000, must be interpreted as meaning, first, that the entry into force of that regulation does not affect the validity of a supplementary national measure, a prohibition, which was adopted before that entry into force and, secondly, that those provisions do not preclude such a measure, provided that that prohibition is in conformity with the common fisheries policy, that it does not go beyond what is necessary to achieve the objective pursued and that it is not contrary to the principle of equal treatment, those being matters which it is for the national court to determine.

([1]) OJ C 327, 20.12.2008.

Judgment of the Court (Second Chamber) of 2 September 2010 (reference for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Republic of Lithuania)) — Kirin Amgen Inc. v Lietuvos Respublikos valstybinis patentų biuras

(Case C-66/09) ([1])

(Patent law — Proprietary medicinal products — Regulation (EEC) No 1768/92 — Articles 7, 19 and 19a(e) — Supplementary protection certificate for medicinal products — Period for lodging the application for such a certificate)

(2010/C 288/17)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Applicant: Kirin Amgen Inc.

Defendant: Lietuvos Respublikos valstybinis patentų biuras

Intervener: Amgen Europe BV

Re:

Reference for a preliminary ruling — Lietuvos Aukščiausiasis Teismas — Interpretation of Articles 3(b), 7(1), 13(1), 19 and 23 of Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products (OJ 1992 L 182, p. 1) — Company holding a European patent and a Community marketing authorisation for a medicinal product, which applied for a supplementary protection certificate for that product — Determination of the commencement date of the period laid down for lodging an application for a supplementary protection certificate — Date on which the marketing authorisation was granted or date on which the regulation in question entered into force for Lithuania through its accession to the European Union

Operative part of the judgment

Articles 7 and 19a(e) of Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products, as amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, must be interpreted as not allowing the holder of a valid basic patent in respect of a product to apply to the competent Lithuanian authorities, within six months of the date upon which the Republic of Lithuania acceded to the European Union, for the grant of a supplementary protection certificate where an authorisation to place that product on the market as a medicinal product was obtained more than six months before accession under Council Regulation (EEC) No 2309/93 of 22 July 1993 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products, but the product did not obtain a marketing authorisation in Lithuania.

(1) OJ C 90, 18.4.2009.

Judgment of the Court (First Chamber) of 2 September 2010 — Calvin Klein Trademark Trust v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Zafra Marroquineros SL

(Case C-254/09 P) (1)

(Appeals — Community trade mark — Word mark CK CREACIONES KENNYA — Opposition by the proprietor of inter alia the Community figurative mark CK Calvin Klein and national marks CK — Opposition rejected)

(2010/C 288/18)

Language of the case: Spanish

Parties

Appellant: Calvin Klein Trademark Trust (represented by: T. Andrade Boué, lawyer)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: O. Mondéjar Ortuño, Agent), Zafra Marroquineros SL (represented by: J.E. Martín Álvarez, lawyer)

Re:

Appeal against the judgment of the Court of First Instance (Sixth Chamber) of 7 May 2009 in Case T 185/07 Calvin Klein Trademark Trust v OHIM and Zafra Marroquineros, SL dismissing the action brought against the decision of the Second Board of Appeal of OHIM of 29 March 2007 (Case R 314/2006-2) relating to opposition proceedings between Calvin Klein Trademark Trust and Zafra Marroquineros, SL.

Operative part of the judgment

The Court:

1. *Dismisses the appeal*

2. *Orders Calvin Klein Trademark Trust to pay the costs.*

(1) OJ C 205, 29.8.2009.

Judgment of the Court (First Chamber) of 9 September 2010 — Office for Harmonisation in the Internal Market (Trade Marks and Designs) v BORCO-Marken-Import Matthiesen GmbH & Co. KG

(Case C-265/09 P) [1]

(Appeal — Community trade mark — Application for registration of the figurative sign 'α' — Absolute grounds for refusal — Distinctive character — Mark consisting of a single letter)

(2010/C 288/19)

Language of the case: German

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent)

Other party to the proceedings: BORCO-Marken-Import Matthiesen GmbH & Co. KG (represented by: M. Wolter, Rechtsanwalt)

Re:

Appeal brought against the judgment of the Court of First Instance (Sixth Chamber) of 29 April 2009 in Case T-23/07 *Borco-Marken-Import Matthiesen* v *OHIM (α)*, by which the Court annulled the decision of the Fourth Board of Appeal of OHIM of 30 November 2006, dismissing the action brought against the decision of the examiner refusing the registration of the figurative sign 'α' as a Community trade mark for goods in Class 33 — Distinctive character of a mark consisting of a single letter

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) to pay the costs.*

[1] OJ C 233, 26.9.2009.

Order of the Court of 9 June 2010 — European Commission v Schneider Electric SA, Federal Republic of Germany, French Republic

(Case C-440/07 P) [1]

(Appeal — Partial annulment of the judgment under appeal — Where the state of the proceedings so permits — Non contractual liability of the Community — Evaluation of the loss)

(2010/C 288/20)

Language of the case: French

Parties

Appellant: European Commission (represented by: M. Petite, F. Arbault, T. Christoforou, R. Lyal and C-F Durand, Agents)

Other parties to the proceedings: Schneider Electric SA (represented by: M. Pittie and A. Winckler, lawyers), Federal Republic of Germany, French Republic

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber, Extended Composition) in case T-351/03 *Schneider Electric* v *Commission*, by which the Court ordered the European Commission to make good, first, the expenses incurred by Schneider Electric SA in respect of its participation in the resumed merger control procedure which followed delivery of the judgments of the Court of First Instance on 22 October 2002 in Cases T-310/01 and T-77/02 *Schneider Electric* v *Commission* and, second, two thirds of the loss sustained by Schneider Electric as a result of the reduction in the transfer price of Legrand SA which Schneider Electric had to concede to the transferee in exchange for the postponement of the effective date of sale of Legrand until 10 December 2002 — Conditions governing the establishment of non contractual liability on the part of the Community — Concepts of wrongful act, damage and direct causal link between the wrongful act and the damage suffered — 'Sufficiently serious' breach of Community law vitiating the procedure for examination of the compatibility of a concentration with the common market

Operative part of the order

1. *The amount of the loss to be made good in point 3 of the operative part of the judgment of the Court of Justice of the European Communities of 16 July 2009 in Case C-440/07 P Commission v Schneider Electric [2009] ECR I-6413 is fixed at EUR 50 000.*

2. *Schneider Electric SA's claim relating to the costs is dismissed.*

(1) OJ C 22 of 26.01.2008.

Order of the Court of 9 July 2010 (reference for a preliminary ruling from the Corte d'appello di Roma (Italy)) — Luigi Ricci (C-286/09), Aduo Pisaneschi (C-287/09) v Istituto nazionale della previdenza sociale (INPS)

(Joined Cases C-286/09 and C-287/09) (1)

(First subparagraph of Article 104(3) of the Rules of Procedure — Officials — Retirement pension — Cumulation of periods of insurance — Article 11 of Annex VIII to the Staff Regulations — Taking account of periods of activity within the European Communities — Article 10 EC)

(2010/C 288/21)

Language of the case: Italian

Referring court

Corte d'appello di Roma (Italy)

Parties to the main proceedings

Applicants: Luigi Ricci (C-286/09), Aduo Pisaneschi (C-287/09)

Defendant: Istituto nazionale della previdenza sociale (INPS)

Re:

Reference for a preliminary ruling — Corte d'appello di Roma — Interpretation of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community — Interpretation of Articles 17, 39 and 42 EC — Old-age pension — Aggregation of insurance periods — Failure to take into account the period of affiliation to the Joint Sickness Insurance Scheme of the European Communities

Operative part of the order

Article 10 EC, together with the Staff Regulations of Officials of the European Communities, must be interpreted as precluding national legislation which does not permit account to be taken of years worked by a European Union citizen in a European Union institution, such as the Commission of the European Communities, or in a European Union body, such as the Economic and Social Committee, with regard to the establishment of a right to a retirement pension under the national scheme, regardless of whether the person involved takes early retirement or retires at the usual age.

(1) OJ C 233, 26.9.2009.

Order of the Court of 16 June 2010 (reference for a preliminary ruling from the Fővárosi Bíróság Gazdasági Kollégiuma (Republic of Hungary)) — RANI Slovakia s.r.o. v Hankook Tire Magyarország Kft

(Case C-298/09) (1)

(First subparagraph of Article 104(3) of the Rules of Procedure — Accession to the European Union — Freedom to provide services — Directive 96/71/EC — Posting of workers in the framework of the provision of services — Temporary employment undertaking — Requirement to have a head office in the territory of the Member State in which the services are supplied)

(2010/C 288/22)

Language of the case: Hungarian

Referring court

Fővárosi Bíróság Gazdasági Kollégiuma (Republic of Hungary)

Parties to the main proceedings

Applicant: RANI Slovakia s.r.o.

Defendant: Hankook Tire Magyarország Kft

Re:

Reference for a preliminary ruling Fővárosi Bíróság — Interpretation of Article 3(c) EC, of Articles 49, 52 and 54 EC, and of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1) — National legislation restricting the undertaking of the activity of temporary employment undertakings to those undertakings established in national territory

Operative part of the order

1. *Articles 49 EC to 54 EC cannot be interpreted as meaning that a Member State's legislation concerning the activity of temporary employment undertakings, in force at the time of accession of that State to the European Union, remains valid so long as the Council of the European Union has not adopted a programme or directives for the purpose of implementing those provisions, with a view to laying down the conditions for liberalisation of the category of supply of services in question.*

2. *Neither the 19th recital in the preamble to Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, nor Article 1(4) thereof can be interpreted as meaning that a Member State may reserve the exercise of the activity of temporary employment undertaking to only those undertakings having their head office in the territory of that Member State or treat them more favourably with regard to authorisation of the activity in question than undertakings established in another Member State.*

3. *Articles 49 EC to 54 EC must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which reserves the exercise of the activity of temporary employment undertaking to undertakings which have their head office in the territory of that Member State.*

([1]) OJ C 267, 7.11.2009.

Order of the Court (Seventh Chamber) of 17 June 2010 (reference for a preliminary ruling from the Anotato Dikastirio Kyprou (Republic of Cyprus)) — Giorgos Michalias v Christina A. Ioannou-Michalia

(Case C-312/09) ([1])

(Article 104(3), second paragraph of the Rules of Procedure — Regulation (EC) No 1347/2000 — Articles 2, 42 and 46 — Judicial cooperation in civil matters — Jurisdiction in matrimonial matters — Accession of a State to the European Union — Divorce proceedings commenced before accession — Temporal scope of Regulation (EC) No 1347/2000))

(2010/C 288/23)

Language of the case: Greek

Referring court

Anotato Dikastirio Kyprou

Parties to the main proceedings

Applicant: Giorgos Michalias

Defendant: Christina A. Ioannou-Michalia

Re:

Reference for a preliminary ruling — Anotato Diastirio Kyprou — Jurisdiction of the courts of a Member State (Cyprus) to interpret and apply Articles 2(1), 42 and 46 of Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses (OJ 2000 L 160, p. 19) — Divorce proceedings commenced by the husband before the courts of Cyprus after the entry into force of the regulation but before Cyprus became a Member State — Divorce proceedings begun by the wife after 1 May 2004 before the courts of another Member State (United Kingdom) which was a Member State throughout the relevant period — Both spouses being Cypriot nationals but having their permanent residence in the United Kingdom.

Operative part

Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses is not applicable to divorce proceedings brought before the courts of a State before the latter became a Member State of the European Union.

([1]) OJ C 244 of 10.10.2009.

Order of the Court of 12 May 2010 — Centre de promotion de l'emploi par la micro-entreprise (CPEM) v European Commission

(Case C-350/09 P) ([1])

(Appeal — European Social Fund — Financial assistance — Cancellation)

(2010/C 288/24)

Language of the case: French

Parties

Appellant: Centre de promotion de l'emploi par la micro-entreprise (CPEM) (represented by: C. Bonnefoi, avocate)

Other party to the proceedings: European Commission (represented by: L. Flynn and A. Steiblytė, Agents)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 30 June 2009 in Case T-444/07 *CPEM* v *Commission* dismissing the appellant's application for annulment of Commission Decision C(2007) 4645 of 4 October 2007 cancelling the assistance granted by the European Social Fund (ESF) by Decision C(1999) 2645 of 17 August 1999 — Microprojects promoting employment and social cohesion — Infringement of the rights of the defence and the principle of equal treatment — Failure to take into account the concept of 'co-responsibility' — Failure to observe the principle of legal certainty as a result of the existence of several different versions of the 'Promoter's Guide' — Doubts as to the applicability of Council Regulation 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) on which OLAF's decision was based

Operative part of the order

1. *The appeal is dismissed;*

2. *The Centre de promotion de l'emploi par la micro-entreprise (CPEM) shall pay the costs.*

(1) OJ C 312, of 19.12.2009.

Order of the Court of 1 July 2010 — DSV Road NV v European Commission

(Case C-358/09 P) (1)

(Appeal — Customs Code — Import of diskettes originating in Thailand — Post-clearance recovery of import duties — Application for remission of import duties)

(2010/C 288/25)

Language of the case: Dutch

Parties

Appellant: DSV Road NV (represented by: A. Poelmans and G. Preckler, advocaten)

Other party to the proceedings: European Commission (represented by: L. Bouyon, Agent)

Re:

Appeal against the judgment of 8 July 2009 of the Court of First Instance (Fourth Chamber) in Case T-219/07 *DSV Road* v *Commission* dismissing an application for annulment of the Commission's Decision of 24 April 2007 informing the Belgian authorities that they might proceed with post-clearance recovery of import duties on diskettes originating in Thailand and that there were no grounds for granting remission of those duties (File reference: REC 05/02)

Operative part of the order

1. *The appeal is dismissed;*

2. *DSV Road NV shall pay the costs.*

(1) OJ C 297, of 05.12.2009.

Order of the Court (Seventh Chamber) of 7 July 2010 (reference for a preliminary ruling from the Corte suprema di cassazione (Italy)) — Gennaro Curia v Ministero dell'Economia e delle Finanze, Agenzia delle Entrate

(Case C-381/09) (1)

(Article 104(3), paragraph 1 of the Rules of Procedure — Sixth VAT Directive — Scope — VAT exemptions — Article 13B(d)(1) — Grant, negotiation and management of credit — Exorbitant lending activities — Activity unlawful under national law)

(2010/C 288/26)

Language of the case: Italian

Referring court

Corte suprema di cassazione (Italy)

Parties to the main proceedings

Applicant: Gennaro Curia

Defendant: Ministero dell'Economia e delle Finanze, Agenzia delle Entrate

Re:

Reference for a preliminary ruling — Interpretation of Article 13B(d)(3) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Exemptions — Transactions consisting in the grant, negotiation and management of credit — Exorbitant lending activities, unlawful activity according to national law

Operative part

Although exorbitant lending is a criminal offence under the national criminal code it falls, despite the fact that it is unlawful, within the scope of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment. Article 13B(d)(1) of that directive must be interpreted as meaning that a Member State cannot impose value added tax on that activity when the corresponding lawful activity of money lending at rates of interest that are not excessive is exempt from VAT.

([1]) OJ C 282, 21.11.2009.

Order of the Court of 30 June 2010 — Royal Appliance International GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs), BSH Bosch und Siemens Hausgeräte GmbH

(Case C-448/09 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Earlier mark 'sensixx' — Word mark 'Centrixx' — Relative ground for refusal — Likelihood of confusion — Application for revocation of an earlier mark — Proceedings pending before the national courts — Request for a stay of the proceedings before the General Court)

(2010/C 288/27)

Language of the case: German

Parties

Appellant: Royal Appliance International GmbH (represented by: K.-J. Michaeli and M. Schork, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Schäffner, acting as Agent), BSH Bosch und Siemens Hausgerate GmbH (represented by: S. Biagosch, Rechtsanwalt)

Re:

Appeal brought against the judgment of the Court of First Instance (First Chamber) of 15 September 2009 in Case T-446/09 *Royal Appliance International* v *OHIM — BSH Bosch und Siemens Hausgeräte*, by which the Court of First Instance dismissed the action for annulment brought against the decision of the Fourth Board of Appeal of OHIM of 3 October 2007, rejecting the registration of the word mark 'Centrixx' as a Community trade mark for certain goods in Class 7, by granting the opposition by the proprietor of the national word mark 'sensixx' — Failure to stay the proceedings while awaiting the resolution of the dispute pending before the national courts concerning the application for revocation of the earlier mark — Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 — Likelihood of confusion between two marks

Operative part of the order

1. *The appeal is dismissed.*

2. *Royal Appliance International GmbH is ordered to pay the costs.*

([1]) OJ C 24, 30.1.2010.

Order of the Court of 10 June 2010 — Thomson Sales Europe v European Commission

(Case C-498/09 P) ([1])

(Appeal — Customs Code — Remission of import duties — Waiver of post-clearance recovery — Anti-dumping duties — No obvious negligence — Complexity of the legislation — Professional experience — Operator's diligence — Colour televisions made in Thailand — Challengeable acts)

(2010/C 288/28)

Language of the case: French

Parties

Appellant: Thomson Sales Europe (represented by: F. Foucault and F Goguel, avocats)

Other party to the proceedings: European Commission (represented by: L. Bouyon and H. van Vliet, Agents)

Re:

Appeal against the judgment of 29 September 2009 of the Court of First Instance (First Chamber) in Joined Cases T-225/07 and T-364/07 *Thomson Sales Europe* v *Commission* by which the Court dismissed the appellant's action for annulment of Commission Decision REM No 03/05 of 7 May 2007 informing the French authorities that remission of import duties on the colour television receivers manufactured in Thailand covered by their application of 14 September 2005 was not justified, and for annulment of the Commission's letter of 20 July 2007 not confirming entitlement to a waiver of post-clearance recovery of import duties on those items — Procedure relating to the application for remission of duties claimed on the basis of Article 239 of the Customs Code and for waiver of post-clearance recovery of those duties on the basis of Article 220(2)(b) of the Code — Failure to respect the rights of the defence — Error in the legal characterisation of the facts

Operative part of the order

1. *The appeal is dismissed;*

2. *Thomson Sales Europe shall pay the costs.*

([1]) OJ C 80, of 27.03.2010.

Reference for a preliminary ruling from the Audiencia Provincial de Oviedo (Spain) lodged on 13 July 2010 — Ángel Lorenzo González Alonso v Nationale Nederlanden Vida Compañía de Seguros y Reaseguros S.A.E.

(Case C-352/10)

(2010/C 288/29)

Language of the case: Spanish

Referring court

Audiencia Provincial de Oviedo

Parties to the main proceedings

Applicant: Ángel Lorenzo González Alonso

Defendant: Nationale Nederlanden Vida Compañía de Seguros y Reaseguros S.A.E.

Question referred

Must Article 3(2)(d) of Council Directive 85/577/EEC ([1]) of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises be interpreted restrictively so as not to cover a contract, concluded away from business premises, under which life assurance is offered in return for payment of a monthly premium to be invested, in varying proportions, in fixed-rate investments, variable-rate investments and financial investment products of the company itself?

([1]) OJ 1985 L 372, p. 31.

Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Brussel (Belgium) lodged on 19 July 2010 — Belgische Vereniging van Auteurs, Componisten en Uitgevers (Sabam) v Netlog NV

(Case C-360/10)

(2010/C 288/30)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Brussel

Parties to the main proceedings

Applicant: Belgische Vereniging van Auteurs, Componisten en Uitgevers (Sabam)

Defendant: Netlog NV

Question referred

Do Directives 2001/29 ([1]) and 2004/48, ([2]) in conjunction with Directives 95/46, ([3]) 2000/31 ([4]) and 2002/58, ([5]) construed in particular in the light of Articles 8 and 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, permit Member States to authorise a national court, before which substantive proceedings have been brought and on the basis merely of a statutory provision stating that: 'They [the national courts] may also

issue an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right', to order a hosting service provider to introduce, for all its customers, in abstracto and as a preventive measure, at its own cost and for an unlimited period, a system for filtering most of the information which is stored on its servers in order to identify on its servers electronic files containing musical, cinematographic or audio-visual work in respect of which SABAM claims to hold rights, and subsequently to block the exchange of such files?

(1) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).
(2) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the Enforcement of Intellectual Property Rights (OJ 2004 L 157, p. 45).
(3) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).
(4) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).
(5) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37).

Reference for a preliminary ruling from the Tribunal Judicial de Póvoa de Lanhoso (Portugal) lodged on 21 July 2010 — Maria de Jesus Barbosa Rodrigues v Companhia de Seguros Zurich SA

(Case C-363/10)

(2010/C 288/31)

Language of the case: Portuguese

Referring court

Tribunal Judicial de Póvoa de Lanhoso

Parties to the main proceedings

Applicant: Maria de Jesus Barbosa Rodrigues

Defendant: Companhia de Seguros Zurich SA

Question referred

In a motor-vehicle collision in which none of the drivers is liable for the accident on the basis of fault, and which has resulted in the death of one them, is it contrary to Community law, in particular Article 3(1) of the First Directive (Directive 72/166/EEC), (1) Article 2(1) of the Second Directive (84/5/EEC) (2) and Article 1 of the Third Directive (90/232/EEC), (3) as those provisions have been interpreted by the Court of Justice of the European Communities, for it to be possible to apportion liability for risk (Article 506(1) and (2) of the Código Civil) with a direct impact on the amount of compensation to be awarded to the persons having a right to compensation — the victim's parents — (since that apportionment of liability for risk will entail a commensurate reduction in the amount of compensation)?

(1) Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972 (II), p. 360).
(2) Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17).
(3) Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1990 L 129, p. 33).

Action brought on 22 July 2010 — European Commission v Republic of Slovenia

(Case C-365/10)

(2010/C 288/32)

Language of the case: Slovene

Parties

Applicant: European Commission (represented by: A. Alcover San Pedro and D. Kukovec, Agents)

Defendant: Republic of Slovenia

Form of order sought

— A declaration that, because for several years running the limit values for annual and daily concentrations of PM10 in ambient air have been exceeded, the Republic of Slovenia has failed to fulfil its obligations under Article 5(1) of

Council Directive 1999/30/EC [1] of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air, which have since 11 June 2010 been laid down in Article 13(1) of Directive 2008/50/EC [2] of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe;

— order the Republic of Slovenia to pay the costs.

Pleas in law and main arguments

It is apparent from the annual report produced by the Republic of Slovenia on observance of the binding daily and annual limit values for PM10 that, in the Republic of Slovenia in the years 2005, 2006 and 2007, in zones S11, S12 and S14 and in agglomerations SIL and SIM, the limit values for annual and daily concentrations of PM 10 in ambient air were exceeded. The European Commission has received no official notification concerning exemption from the obligation to apply the limit values in accordance with Article 22(2) of Directive 2008/50/EC.

[1] OJ 1999 L 163, p. 41.
[2] OJ 2008 L 152, p. 1.

Appeal brought on 22 July 2010 by EMC Development AB against the judgment of the General Court (Fifth Chamber) delivered on 12 May 2010 in Case T-432/05: EMC Development AB v European Commission

(Case C-367/10 P)

(2010/C 288/33)

Language of the case: English

Parties

Appellant: EMC Development AB (represented by: W.-N. Schelp, avocat)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

(i) annul the Commission's Decision dated 28.09.05;

(ii) in the alternative to (i), set aside the Judgment under appeal in whole or in part and refer the case back to the General Court for an adjudication on the substance, in the light of the guidance which this Court may provide to it;

(iii) in any event, Order the Commission to pay the costs of the Applicant incurred before the General Court and the Court of Justice.

Pleas in law and main arguments

The applicant submits that the General Court, in adopting the Commission's positions vis à vis the Guidelines, required the appellant to prove matters of fact and placed an unassailable burden upon the appellant. In so doing it has sought to require proof of the Standard's effects without considering the wider and more fundamental issues of its nature. The applicant considers that this constitutes an error of law and that the order of procedure of the tests as between the nature and the effects of the Standard have been reversed.

Reference for a preliminary ruling from the Naczelny Sąd Administracyjny, Izba Finansowa, Wydział II (Republic of Poland), lodged on 26 July 2010 — Pak-Holdco Sp zoo v Dyrektor Izby Skarbowej w Poznaniu

(Case C-372/10)

(2010/C 288/34)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny, Izba Finansowa, Wydział II

Parties to the main proceedings

Appellant: Pak-Holdco Sp zoo

Respondent: Dyrektor Izby Skarbowej w Poznaniu

Questions referred

1. In interpreting Article 7(1) of Directive 69/335/EEC, [1] must a national court take account of the provisions of amending directives, in particular Directives 73/79/EEC [2] and 73/80/EEC, [3] even though those directives were no longer in force when the Republic of Poland acceded to the European Union?

2. If the answer to Question 1 is in the negative, does the exclusion of the assets of a capital company from the amount on which capital duty is charged, as laid down in the first indent of Article 5(3) of Directive 69/335/EEC, concern only the assets of a capital company which has had an increase in capital?

(1) OJ, English Special Edition 1969(II), p. 412.
(2) OJ 1973 L 103, p. 13.
(3) OJ 1973 L 103, p. 15.

Appeal brought on 30 July 2010 by Chalkor AE Epexergasias Metallon against the judgment of the General Court (Eighth Chamber) delivered on 19 May 2010 in Case T-21/05: Chalkor AE Epexergasias Metallon v European Commission

(Case C-386/10 P)

(2010/C 288/35)

Language of the case: English

Parties

Appellant: Chalkor AE Epexergasias Metallon (represented by: I. Forrester QC)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— Set aside or annul in whole or in part the Judgment of the General Court insofar as it rejects Halcor's claim for annulment of Article 1 of the Decision;

— Annul or substantially reduce the fine imposed on Halcor or take such other action as justice may require; and

— Award Halcor the costs, including its costs in the proceedings before the General Court.

Pleas in law and main arguments

The appellant submits that the contested judgment should be set aside on the following grounds:

(a) The General Court erred in applying a limited standard of judicial review. The Court did not consider the basic question of whether the fine imposed on Halcor was appropriate, fair and proportionate in relation to the gravity and duration of the unlawful conduct;

(b) The General Court infringed the principle of equal treatment. Although the Court correctly held that the Commission had infringed the principle of equal treatment by treating Halcor and the other companies in an identical manner, without such treatment being objectively justified, it failed to respect that principle thereafter;

(c) The General Court's adaptation of the fine imposed on Halcor was irrational and arbitrary; and

(d) The contested judgment contains no reasoning adequate to explain the fine imposed on Halcor.

Reference for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 4 August 2010 — Suiker Unie GmbH — Zuckerfabrik Anklam v Hauptzollamt Hamburg-Jonas

(Case C-392/10)

(2010/C 288/36)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicants: Suiker Unie GmbH — Zuckerfabrik Anklam

Defendants: Hauptzollamt Hamburg-Jonas

Question referred

Is the condition for receipt of a differentiated refund established in Article 15(1) in conjunction with Article 15(3) of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the

system of export refunds on agricultural products (OJ 1999 L 102, p. 11), that is, completion of the customs import formalities, satisfied, when in the third country of destination following release for inward processing without collection of import duties the product undergoes a substantial processing or working within the meaning of Article 24 of Council Regulation (EC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1, as amended) and the product resulting from that processing or working is exported to a third country?

Reference for a preliminary ruling from the Conseil d'Etat (France) lodged on 6 August 2010 — Société Groupe Limagrain Holding v FranceAgrimer

(Case C-402/10)

(2010/C 288/37)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Appellant: Société Groupe Limagrain Holding

Respondent: FranceAgriMer

Questions referred

1. Is the failure, in disregard of the obligations imposed on the warehouse keeper under the Community customs legislation, to keep stock records of products or goods placed under the customs warehousing procedure sufficient to deprive the exporter who has placed his products or his goods in that warehouse of entitlement to the advance payment provided for by the provisions of Commission Regulation (EEC) No 3665/87 of 27 November 1987 ([1]) relating to the system of export refunds in conjunction with the provisions of Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural products ([2])?

2. If the answer to the first question is in the affirmative, what conclusions should be drawn as regards the sums paid to the recipient?

In particular:

(a) in the event that it is proved that the goods have actually been exported, can the exporter be regarded as having obtained the amount of the refunds relating to those exports, wholly or in part; if in part, is it appropriate to adopt the rates of refunds as pre-established under the regulations relating to advance payment of export refunds or the rates applicable on the date of actual exportation, whether higher or lower than the pre-established rate?

(b) in the event that there is an obligation to repay all or part of the sums received, is it appropriate, pursuant to Article 33 of Commission Regulation (EEC) No 3665/87 of 27 November 1987 relating to the system of export refunds, to add, to the amount to be repaid as unduly received, the penalty provided for by that article, although the responsibility for keeping stock records rests with the warehouse keeper, where, as in the present case, the customs warehouse is a type C private warehouse maintained by the exporter of the agricultural goods himself?

([1]) Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1)

([2]) OJ 1980 L 62, p. 5

Reference for a preliminary ruling from the Amtsgericht Bruchsal (Germany) lodged on 10 August 2010 — Criminal proceedings against QB (*)

(Case C-405/10)

(2010/C 288/38)

Language of the case: German

Referring court

Amtsgericht Bruchsal

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

Party to the main proceedings

QB (*)

Question referred

Are the rules in Article 37 of Regulation (EC) No 1013/2006 of 14 June 2006 ([1]), in conjunction with Regulation (EC) No 1418/2007 of 29 November 2007 ([2]) to be interpreted as meaning that it is prohibited to ship to Lebanon waste which falls within waste category B 1120 of Annex IX to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989?

([1]) OJ 2006 L 190, p. 1
([2]) OJ 2007 L 316, p. 6

Action brought on 17 August 2010 — European Commission v Hellenic Republic

(Case C-410/10)

(2010/C 288/39)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Karanasou Apostolopoulou and G. Braun)

Defendant: Hellenic Republic

Form of order sought

— declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, or in any event by not notifying those provisions to the Commission, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

Pleas in law and main arguments

The time-limit for transposition of Directive 2007/36 into domestic law expired on 3 August 2009.

Reference for a preliminary ruling from the Tribunale Ordinario di Prato (Italy), lodged on 18 August 2010 — Criminal proceedings against Michela Pulignani, Alfonso Picariello, Bianca Cilla, Andrea Moretti, Mauro Bianconi, Patrizio Gori, Emilio Duranti and Concetta Zungri

(Case C-413/10)

(2010/C 288/40)

Language of the case: Italian

Referring court

Tribunale Ordinario di Prato

Parties to the main proceedings

Michela Pulignani, Alfonso Picariello, Bianca Cilla, Andrea Moretti, Mauro Bianconi, Patrizio Gori, Emilio Duranti and Concetta Zungri

Question referred

Are the Italian rules on the collection of bets contained in Article 4 of Law No 401/89 and Article 88 of Royal Decree No 773/31, as amended by Article 37(4) and (5) of Law No 388 of 23 December 2000, Article 38 of Decree Law No 223/06 and Article 23 of the model agreement published in the *Official Journal of the European Communities* of 30 August 2006, compatible with Articles 43 and 49 of the Treaty establishing the European Community?

Reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 23 August 2010 — Ministero dell'Economia e delle Finanze; Agenzia delle Entrate v 3 M Italia SpA

(Case C-417/10)

(2010/C 288/41)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicants: Ministero dell'Economia e delle Finanze; Agenzia delle Entrate

Defendant: 3 M Italia SpA

Questions referred

1. Does the abuse of rights principle in taxation matters, as defined in Cases C-255/02 *Halifax and Others* [2006] ECR I-1609 and C-425/06 *Part Service* [2008] ECR I-897, constitute a fundamental principle of Community law only in the field of harmonised taxes and in matters governed by secondary Community law provisions, or does it extend, as a category of abuse of fundamental freedoms, to matters involving non-harmonised taxes, such as direct taxes, where the tax relates to transnational financial matters, such as the acquisition by a company of rights of usufruct over the shares of a second company established in another Member State or in a non-Member State?

2. Irrespective of the answer to the first question, is there a Community interest in provision being made by the Member States for adequate anti-avoidance measures in the field of non-harmonised taxes, and is such an interest thwarted by the failure to apply — in the context of a tax amnesty measure — the abuse of rights principle which is also recognised as a rule of national law and, if so, are the principles that may be inferred from Article 4(3) of the Treaty on European Union infringed?

3. Do the principles governing the single market impliedly preclude not only extraordinary measures in the form of a total waiver of a tax claim, but also an extraordinary measure for concluding tax disputes whose application is limited in time and conditional upon payment of only part of the tax due, which is considerably less than the full amount?

4. Do the principle of non-discrimination and the rules governing State aid preclude the system for concluding tax disputes at issue in the present case?

5. Does the principle of the effective application of Community law preclude extraordinary procedural rules of limited duration which remove the power to review legality (in particular concerning the correct interpretation and application of Community law) from the court of last instance, which is under an obligation to refer questions of validity and interpretation requiring a preliminary ruling to the Court of Justice of the European Union?

Appeal brought on 23 August 2010 by Herhof-Verwaltungsgesellschaft mbH against the judgment of the General Court (Fourth Chamber) delivered on 7 July 2010 in Case T-60/09 Herhof-Verwaltungsgesellschaft mbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs), other party to the proceedings before the Board of Appeal of OHIM: Stabilator sp zoo

(Case C-418/10 P)

(2010/C 288/42)

Language of the case: German

Parties

Appellant: Herhof-Verwaltungsgesellschaft mbH (represented by: A. Zinnecker and S. Müller, Rechtsanwälte)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Stabilator sp zoo

Form of order sought

— Set aside the judgment of the General Court of the European Union of 7 July 2010 in Case T-60/09;

— Deliver final judgment in the case and uphold the forms of order sought by the appellant in the course of the proceedings at first instance;

— In the alternative, set aside the judgment referred to in the first indent above and refer the matter back to the General Court;

— Order OHIM to pay the costs.

Pleas in law and main arguments

1. First the grounds of the judgment under appeal are, in and of themselves, contradictory. On the one hand, the General Court accepts that the Board of Appeal limited itself to examining which types of undertaking would offer the opposing goods and services, and thereby wrongly assessed the number of those undertakings possibly as a consequence of a too-narrow interpretation of the lists of earlier marks resulting from an overall assessment of the goods and services. On the other hand, the question whether the Board of Appeal made errors of assessment can be decided upon only after an assessment of 'the Board of Appeal's prevailing examination of each of the goods and services covered by the application', whereas the General Court then undertakes those individual assessments — which had not been carried out by the Board of Appeal — in order to reach the conclusion that no errors made by the Board of Appeal were apparent. That inconsistency had a burdensome effect on the appellant, since in the context of the individual comparisons undertaken by General Court, constant recourse was had to the 'overall comparison', carried out by the Board of Appeal on the basis of sectors, so that the restrictive interpretation of the lists of goods and services covered by earlier marks resulting from that 'overall comparison' is repeated.

2. Second, the General Court infringed Article 8(1)(b) of Regulation No 207/2009, in that, for each of the individual comparisons of the lists of goods and services of the marks at issue which it carried out, the General Court interpreted them too narrowly in the light of the overall comparison on the basis of sectors carried out by the Board of Appeal, and the General Court thereby distorted the content of those lists and, consequently, distorted the factors such as nature, use, intended purpose and addressees of the relevant goods and services which result therefrom.

3. Third, the General Court infringed Article 65 of Regulation No 207/2009 and its own Rules of Procedure, in particular the therein referred to Community law principle of the right to a fair hearing, in that it did not allow specific documents in evidence, although it was not possible for the appellant to produce those documents before OHIM, as it could not have predicted that OHIM would not compare the individual goods and services of the relevant signs against one another but rather merely examine them by way of an overall assessment.

Reference for a preliminary ruling from the Landgericht Hamburg (Germany) lodged on 23 August 2010 — Söll GmbH v Tetra GmbH

(Case C-420/10)

(2010/C 288/43)

Language of the case: German

Referring court

Landgericht Hamburg

Parties to the main proceedings

Applicant: Söll GmbH

Defendant: Tetra GmbH

Questions referred

1. For a product to be classified as a 'biocidal product', within the meaning of Article 2(1)(a) of Directive 98/8/EC [1], must that product itself destroy, deter, render harmless, prevent the action of, or otherwise exert a controlling effect on the harmful organism directly by chemical or biological means, or is it sufficient that the product have an indirect effect on that harmful organism?

2. If, for a product to be classified as a 'biocidal product' within the meaning of Article 2(1)(a) of Directive 98/8/EC, the Court of Justice deems that an indirect chemical or biological effect on the harmful organism is sufficient, what is required of the product's indirect effect on the harmful organism in order to be able to classify such a product as a 'biocidal product', within the meaning of Article 2(1)(a) of Directive 98/8/EC, or is an indirect effect of any nature sufficient to establish a product's biocidal quality?

[1] Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1).

Reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 31 August 2010 — Banca Antoniana Popolare Veneta s.p.a., incorporating Banca Nazionale Dell'Agricoltura s.p.a. v Ministero dell'Economia e delle Finanze, Agenzia delle Entrate

(Case C-427/10)

(2010/C 288/44)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: Banca Antoniana Popolare Veneta spa, incorporating Banca Nazionale Dell'Agricoltura spa

Defendants: Ministero dell'Economia e delle Finanze, Agenzia delle Entrate

Questions referred

1. Do the principles of effectiveness, non-discrimination and tax neutrality in respect of value added tax preclude a national framework or practice that construes the right of the purchaser/client to reimbursement of VAT paid in error as a right to a payment due under the ordinary law, unlike that exercised by the principal debtor (supplier/provider of the service), with a time limit for the former significantly longer than that applied to the latter, such that the claim of the purchaser/client, brought when the time limit for the supplier/provider of the service has already expired, can give rise to an order for reimbursement against the latter, who can no longer claim reimbursement from the tax authority, and with no provision for any bridging instrument to prevent conflicts or disputes between the proceedings brought or to be brought before the various courts?

2. Furthermore, are the above-mentioned principles compatible with a national practice or case-law that allows a reimbursement order to be made in favour of the purchaser/client against the supplier/provider of the service that has not brought its reimbursement claim before another court within the time limits imposed on it, relying on a judicial interpretation, implemented by administrative practice, that the transaction was subject to VAT?

Order of the Court (Seventh Chamber) of 9 July 2010 — The Wellcome Foundation Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Serono Genetics Institute SA

(Case C-461/09 P) [1]

(Appeals — Community trade mark — Word mark FAMOXIN — Application for a declaration of invalidity made by the proprietor of the national word mark LAMOXIN — Rejection of the application for a declaration of invalidity)

(2010/C 288/45)

Language of the case: English

Parties

Applicant: The Wellcome Foundation Ltd (represented by: R. Gilbey, avocat)

Other parties to the main proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, acting as Agent), Serono Genetics Institute SA

Re:

Appeal brought against the judgment of the Court of First Instance (Seventh Chamber) of 23 September 2009 in Joined Cases T-493/07, T-26/08 and T-27/08 *GlaxoSmithkline — Laboratórios Wellcome de Portugal — The Wellcome Foundation* v *OHIM*, in which the Court of First Instance dismissed an action for annulment brought by the proprietor of the national word mark 'LANOXIN' for goods in Class 5 against Decision R 8/2007-1 of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 14 September 2007 dismissing the appeal brought against the decision of the Cancellation Division rejecting the application for a declaration of invalidity submitted by the applicant concerning the Community word mark 'FAMOXIN' for goods and services in Class 5

Operative part of the order

The Court:

1. *Dismisses the appeal;*

2. *Orders The Wellcome Foundation Ltd to pay the costs.*

[1] OJ C 37, 13.02.2010.

Order of the President of the First Chamber of the Court of 1 July 2010 — European Commission v French Republic

(Case C-200/08) ([1])

(2010/C 288/46)

Language of the case: French

The President of the First Chamber has ordered that the case be removed from the register.

([1]) OJ C 171, 5.7.2008.

Order of the President of the Eighth Chamber of the Court of 7 July 2010 — European Commission v Republic of Cyprus

(Case C-190/09) ([1])

(2010/C 288/47)

Language of the case: Greek

The President of the Eighth Chamber has ordered that the case be removed from the register.

([1]) OJ C 180, 1.8.2009.

Order of the President of the Court of 25 May 2010 (reference for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — DAR Duale Abfallwirtschaft und Verwertung Ruhrgebiet GmbH v Ministerstvo životního prostředí

(Case C-299/09) ([1])

(2010/C 288/48)

Language of the case: Czech

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 267, 7.11.2009.

Order of the President of the Court of 22 June 2010 — European Commission v Republic of Estonia

(Case C-527/09) ([1])

(2010/C 288/49)

Language of the case: Estonian

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 63, 13.3.2010.

Order of the President of the Court of 19 July 2010 (reference for a preliminary ruling from the Tribunale di Palermo — Italy) — Assessorato del Lavoro e della Previdenza Sociale v Seasoft SpA

(Case C-88/10) ([1])

(2010/C 288/50)

Language of the case: Italian

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 100, 17.4.2010.

Order of the President of the Court of 12 July 2010 — European Commission v Grand Duchy of Luxembourg

(Case C-100/10) ([1])

(2010/C 288/51)

Language of the case: French

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 113, 1.5.2010.

GENERAL COURT

Judgment of the General Court of 9 September 2010 — British Aggregates and Others v Commission

(Case T-359/04) ([1])

(State aid — Environmental tax on aggregates in the United Kingdom — Exemption for Northern Ireland — Commission decision not to raise objections — Serious difficulties — Community guidelines on State aid for environmental protection)

(2010/C 288/52)

Language of the case: English

Parties

Applicants: British Aggregates Association (Lanark, United Kingdom), Healy Bros. Ltd (Middleton, Ireland) and David K. Trotter & Sons Ltd (represented by: C. Pouncey, Solicitor, and L. Van den Hende, lawyer)

Defendant: European Commission (represented by: J. Flett and T. Scharf, Agents)

Intervening party: United Kingdom of Great Britain and Northern Ireland, (represented initially by M. Bethell and subsequently by E. Jenkinson and I. Rao, and lastly by S. Ossowski, acting as Agents, assisted by M. Hall and G. Facenna, Barristers)

Re:

Application for annulment of Commission Decision C(2004) 1614 final of 7 May 2004 not to raise objections to the modified exemption for Northern Ireland in the context of the scheme of levies on aggregates in the United Kingdom

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2004) 1614 final of 7 May 2004 not to raise objections to the change in the exemption, in Northern Ireland, from the levy on aggregates in the United Kingdom;*

2. *Orders the Commission to bear its own costs and to pay those incurred by the British Aggregates Association, Healy Bros. Ltd and David K. Trotter & Sons Ltd;*

3. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.*

([1]) OJ C 284, 20.11.2004.

Judgment of the General Court of 8 September 2010 — Deltafina v Commission

(Case T-29/05) ([1])

(Competition — Agreements, decisions and concerted practices — Spanish market for the purchase and first processing of raw tobacco — Decision finding an infringement of Article 81 EC — Price-fixing and market-sharing — Consistency between the statement of objections and the contested decision — Rights of the defence — Definition of the relevant market — Fines — Gravity of the infringement — Aggravating circumstances — Role as leader — Cooperation)

(2010/C 288/53)

Language of the case: Italian

Parties

Applicant: Deltafina SpA (Orvieto, Italy) (represented by: R. Jacchia, A. Terranova, I. Picciano, F. Ferraro, J.-F. Bellis and F. Di Gianni, lawyers)

Defendant: European Commission (represented by: initially, É. Gippini Fournier and F. Amato and, subsequently, É. Gippini Fournier and V. Di Bucci, acting as Agents)

Re:

Application for annulment of Commission Decision C(2004) 4030 final of 20 October 2004 relating to a proceeding under Article 81 [EC] (Case COMP/C.38.238.B.2 — Raw tobacco — Spain) and, in the alternative, a reduction in the fine imposed on the applicant in the decision.

Operative part of the judgment

The Court:

1. *Sets the amount of the fine imposed on Deltafina SpA by Article 3 of Commission Decision C(2004) 4030 final of 20 October 2004 relating to a proceeding under Article 81(1) [EC] (Case COMP/C.38.238/B.2 — Raw tobacco — Spain) at EUR 6 120 000.*

2. *Dismisses the action as to the remainder.*

3. *Orders Deltafina to bear three quarters of its own costs and pay three quarters of the costs incurred by the Commission and the Commission to bear one quarter of its own costs and pay one quarter of those incurred by Deltafina.*

(1) OJ C 82, 2.4.2005.

Judgment of the General Court of 8 September 2010 — Commission v Alexiadou

(Case T-312/05) (1)

(Arbitration clause — Contract concerning a project for the development of a technology for the production of waterproof leathers — Failure to perform the contract — Reimbursement of sums advanced — Default interest — Referral back to the General Court after annulment — Default proceedings)

(2010/C 288/54)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: D. Triantafyllou, acting as Agent)

Defendant: Efrosyni Alexiadou (Saloniki, Greece) (represented by: C. Matellas, lawyer)

Re:

Action brought by the Commission under Article 238 EC seeking an order for reimbursement of EUR 23 036,31 advanced by the Commission to the defendant under a contract concerning a project for developing a technology for the production of waterproof leathers (Contract G1ST-CT-2002-50227), together with default interest.

Operative part of the judgment

The Court:

1. *Orders Efrosyni Alexiadou to repay the sum of EUR 23 036,31 to the European Commission, together with default interest:*

   — *at the rate of 5.25 % per annum from 1 March 2003 to 31 August 2005;*

   — *at the statutory annual rate applicable under Belgian law, with a ceiling of 5.25 % per annum, from 1 September 2005 to payment in full of the debt;*

2. *Orders Efrosyni Alexiadou to pay the costs.*

(1) OJ C 271, 29.10.2005.

Judgment of the General Court of 9 September 2010 — Switzerland v Commission

(Case T-319/05) (1)

(External relations — Agreement between the European Community and the Swiss Confederation on Air Transport — German measures relating to the approaches to Zurich airport — Regulation (EEC) No 2408/92 — Rights of the defence — Principle of non-discrimination — Principle of proportionality)

(2010/C 288/55)

Language of the case: German

Parties

Applicant: Swiss Confederation (represented by: S. Hirsbrunner, U. Soltész and P. Melcher, lawyers)

Defendant: European Commission (represented by: F. Benyon, M. Huttunen and M. Niejahr, acting as Agents)

Interveners in support of the defendant: Federal Republic of Germany (represented by: C.-D. Quassowski and A. Tiemann, acting as Agents, assisted by T. Masing, lawyer); and Landkreis Waldshut (represented by M. Núñez-Müller, lawyer)

Re:

ACTION for annulment of Commission Decision 2004/12/EC of 5 December 2003 on a procedure relating to the application of Article 18(2), first sentence, of the Agreement between the European Community and the Swiss Confederation on air transport and Council Regulation (EEC) No 2408/92 (Case TREN/AMA/11/03 — German measures relating to the approaches to Zurich airport) (OJ 2004 L 4, p. 13)

Operative part of the judgment

The General Court:

1. *Dismisses the action;*

2. *Orders the Swiss Confederation to bear its own costs and to pay those incurred by the European Commission;*

3. *Orders the Federal Republic of Germany and Landkreis Waldshut to bear their own respective costs.*

(1) OJ C 94, 17.4.2004 (previously Case C-70/04).

Judgment of the General Court of 9 September 2010 — Evropaïki Dynamiki v EMCDDA)

(Case T-63/06) (1)

(Public service contracts — EMCDDA tender procedure — Supply of software programming and consultancy services — Rejection of a submitted tender — Award criteria — Manifest error of assessment — Equal treatment — Transparency — Principle of sound administration — Obligation to state reasons)

(2010/C 288/56)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis, lawyer)

Defendant: European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) (represented by: D. Storti, Agent, assisted by J. Stuyck, lawyer)

Re:

Application for annulment of the decision of the European Monitoring Centre for Drugs and Drug Addiction of 5 December 2005 to reject the bid submitted by the applicant in response to a call for tenders for the supply of software programming and consultancy services (OJ 2005 S 187) and to award the contract to another tenderer or, in the alternative, a claim for damages.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE to bear its own costs and to pay those of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA).*

(1) OJ C 86, 8.4.2006.

Judgment of the General Court of (Fifth Chamber) of 9 September 2010 — Usha Martin Ltd v Council of the European Union and European Commission

(Case T-119/06) (1)

(Dumping — Imports of steel ropes and cables originating, inter alia, in India — Breach of an undertaking — Principle of proportionality — Article 8(1), (7) and (9) of Regulation (EC) No 384/96 (now Article 8(1), (7) and (9) of Regulation (EC) No 1225/2009))

(2010/C 288/57)

Language of the case: English

Parties

Applicant: Usha Martin Ltd (Kolkata, India) (represented by: K. Adamantopoulos, lawyer, and J. Branton, Solicitor, V. Akritidis and Y. Melin, lawyers)

Defendant: Council of the European Union (represented by J.-P. Hix and B. Driessen, acting as Agents, and by G. Berrisch, lawyer); and European Commission (represented by: P. Stancanelli and T. Scharf, acting as Agents)

Re:

Application for annulment of Commission Decision 2006/38/EC of 22 December 2005 amending Commission Decision 1999/572/EC accepting undertakings offered in connection with the anti-dumping proceedings concerning imports of steel wire ropes and cables originating, inter alia, in India (OJ 2006 L 22, p. 54), and Council Regulation (EC) No 121/2006 of 23 January 2006 amending Regulation (EC) No 1858/2005 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating, inter alia, in India (OJ 2006 L 22, p. 1)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Usha Martin Ltd to pay the costs.*

(1) OJ C 154, 1.7.2006.

Judgment of the General Court of 9 September 2010 — Tomra Systems and Others v Commission

(Case T-155/06) (1)

(Competition — Abuse of dominant position — Market for machines for the collection of used beverage containers — Decision finding an infringement of Article 82 EC and Article 54 of the EEA Agreement — Exclusivity agreements, quantity commitments and loyalty rebates forming part of a strategy of excluding competitors from the market — Fine — Proportionality)

(2010/C 288/58)

Language of the case: English

Parties

Applicants: Tomra Systems ASA (Asker, Norway); Tomra Europe AS (Asker); Tomra Systems GmbH (Hilden, Germany); Tomra Systems BV (Apeldoorn, Netherlands); Tomra Leergutsysteme GmbH (Vienna, Austria); Tomra Systems AB (Sollentuna, Sweden); and Tomra Butikksystemer AS (Asker) (represented by: initially, A. Ryan, Solicitor, and J. Midthjell, lawyer, and, subsequently, by A. Ryan and N. Frey, Solicitors)

Defendant: European Commission (represented by: É. Gippini Fournier, acting as Agent)

Re:

Application for annulment of Commission Decision C(2006) 734 final of 29 March 2006 relating to proceedings under Article 82 [EC] and Article 54 of the EEA Agreement (Case COMP/E 1/38.113 — Prokent Tomra)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Tomra Systems ASA, Tomra Europe AS, Tomra Systems GmbH, Tomra Systems BV, Tomra Leergutsysteme GmbH, Tomra Systems AB and Tomra Butikksystemer AS to bear their own costs and to pay those incurred by the European Commission.*

(1) OJ C 190, 12.8.2006.

Judgment of the General Court of 9 September 2010 — CSL Behring v Commission and EMA

(Case T-264/07) (1)

(Medicinal products for human use — Procedure for designation of orphan medicinal products — Application for designation of human fibrinogen as an orphan medicinal product — Obligation to submit the application for designation before the application for marketing authorisation is made — Decision of EMA on the validity of the application)

(2010/C 288/59)

Language of the case: German

Parties

Applicant: CSL Behring GmbH (Marburg, Germany) (represented by: C. Koenig, Professor, and F. Leinen, lawyer)

Defendants: European Commission (represented by: B. Stromsky and B. Schima, Agents) and European Medicines Agency (EMA), (represented by V. Salvatore, Agent, T. Eicke, Barrister and C. Sherliker, Solicitor

Intervener in support of the defendant European Commission: European Parliament (represented by E. Waldherr and I. Anagnostopoulou, Agents)

Re:

Action for annulment of the decision of 24 May 2007 of the European Medicines Agency (EMA) declaring invalid the applicant's application for designation of human fibrinogen as an orphan medicinal product within the meaning of Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products (OJ 2000 L 18, p. 1)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders CSL Behring GmbH to bear its own costs and to pay those of the European Commission and of the European Medicines Agency (EMA);*

3. *Orders the European Parliament to bear its own costs.*

(1) OJ C 235, 6.10.2007.

Judgment of the General Court of 9 September 2010 — Evropaïki Dynamiki v Commission

(Case T-300/07) ([1])

(Public service contracts — Community tendering procedure — Provision of information technology services relating to the management and maintenance of an internet portal — Rejection of the bid submitted by a tenderer — Award criteria — Obligation to state the reasons on which a decision is based — Manifest error of assessment — Equal treatment — Transparency)

(2010/C 288/60)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis, lawyer)

Defendant: European Commission (represented by: E. Manhaeve, acting as Agent, and by J. Stuyk, lawyer)

Re:

APPLICATION (i) for annulment of the Commission's decisions of 21 May 2007 and 13 July 2007 rejecting the tenders submitted by the applicant in tendering procedure ENTR/05/78 for Lot 1 (Editorial Work and Translation) and Lot 2 (Infrastructure Management) for the management and maintenance of the 'Your Europe' portal (OJ 2006/S 143-153057) and awarding those contracts to another tenderer and (ii) for damages

Operative part of the judgment

The Court:

1. *Annuls the Commission's decision of 13 July 2007 rejecting the tender submitted by Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE in tendering procedure ENTR/05/78 for Lot 2 (Infrastructure Management) for the management and maintenance of the 'Your Europe' portal and awarding that contract to another tenderer;*

2. *Dismisses the remainder of the claim for annulment;*

3. *Dismisses the claim for damages;*

4. *Orders Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis to pay 50 % of its own costs and 50 % of the costs incurred by the European Commission, and the European Commission to pay 50 % of its own costs and 50 % of those incurred by Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE.*

([1]) OJ C 235, 6.10.2007.

Judgment of the General Court of 9 September 2010 — Al-Aqsa v Council

(Case T-348/07) ([1])

(Common foreign and security policy — Restrictive measures against certain persons and entities with a view to combating terrorism — Freezing of funds — Common Position 2001/931/CFSP and Regulation (EC) No 2580/2001 — Action for annulment — Adaptation of heads of claim — Judicial review — Conditions for implementation of a European Union measure freezing funds)

(2010/C 288/61)

Language of the case: Dutch

Parties

Applicant: Stichting Al-Aqsa (Heerlen (Netherlands) (represented by: J. Pauw, G. Pulles, A.M. van Eik and M. Uiterwaal, lawyers)

Defendant: Council of the European Union (represented by: E. Finnegan, G.-J. Van Hegelsom and B. Driessen, Agents)

Interveners in support of the defendant: Kingdom of the Netherlands (represented by: C.M. Wissels, M. de Mol and Y. de Vries, Agents); and European Commission, (represented by: P. van Nuffel and S. Boelaert, Agents)

Re:

Application, originally, in essence, for annulment of Council Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC (OJ 2007 L 169, p. 58), in so far as that act concerns the applicant

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC; Council Decision 2007/868/EC of 20 December 2007 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2007/445; Council Decision 2008/583/EC of 15 July 2008 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2007/868; Council Decision 2009/62/EC of 26 January 2009 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2008/583; and Council Regulation (EC) No 501/2009 of 15 June 2009 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2009/62, in so far as those acts concern Stitching Al-Aqsa;*

2. *Dismisses the application as to the remainder;*

3. *Orders the Council of the European Union to bear, in addition to its own costs, the costs of Stichting Al-Aqsa;*

4. *Orders the Kingdom of the Netherlands and the European Commission to bear their own costs.*

([1]) OJ C 269, 10.11.2007.

Judgment of the General Court of 9 September 2010 — Axis v OHIM — Etra Investigación y Desarrollo (ETRAX)

(Case T-70/08) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark ETRAX — Earlier national figurative marks containing the word elements ETRA I+D — Relative ground for refusal — Admissibility of the appeal before the Board of Appeal — Rule 49(1) of Regulation (EC) No 2868/95 and Article 59 of Regulation (EC) No 40/94 (now Article 60 of Regulation (EC) No 207/2009))

(2010/C 288/62)

Language of the case: English

Parties

Applicant: Axis AB (Lund, Sweden) (represented by: J. Norderyd, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Etra Investigación y Desarrollo, SA (Valencia, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 27 November 2007 (Case R 334/2007-2) relating to opposition proceedings between Etra Investigación y Desarrollo, SA and Axis AB.

Operative part of the order

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 27 November 2007 (Case R 334/2007-2) relating to opposition proceedings between Etra Investigación y Desarrollo, SA and Axis AB;*

2. *Orders OHIM to bear its own costs and to pay those incurred by Axis AB.*

([1]) OJ C 107, 26.4.2008.

Judgment of the General Court of 9 September 2010 — Now Pharm v Commission

(Case T-74/08) ([1])

(Medicinal products for human use — Orphan Designation Procedure — Request for designation of the medicinal product 'Chelidonii radix special liquid extract' ('Ukrain') as an orphan medicinal product — Commission decision refusing designation as an orphan medicinal product)

(2010/C 288/63)

Language of the case: German

Parties

Applicant: Now Pharm AG (Luxembourg, Luxembourg) (represented by: initially C. Kaletta and I.-J. Tegebauer and subsequently C. Kaletta, lawyers)

Defendant: European Commission (represented by: B. Schima and M. Šimerdová, Agents)

Re:

Application for annulment of Commission Decision C(2007) 6132, of 4 December 2007 refusing the designation of the medicinal product 'Chelidonii radix special liquid extract' as an orphan medicinal product under Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products (OJ 2000 L 18, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders Now Pharm AG to pay the costs.*

(1) OJ C 92, 12.4.2008.

Judgment of the General Court of 8 September 2010 — Kido v OHIM — Amberes (SCORPIONEXO)

(Case T-152/08) (1)

(Community trade mark — Opposition proceedings — Application for Community word mark SCORPIONEXO — Earlier national figurative mark ESCORPION — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 288/64)

Language of the case: Spanish

Parties

Applicant: Kido Industrial Ltd (Yangcheon-gu, Republic of Korea) (represented by: M. Mall, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Amberes, SA (Igualada, Spain)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 31 January 2008 (Case R287/2007-1), relating to opposition proceedings between Amberes, SA and Kido Industrial Ltd.

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Kido Industrial Ltd to pay the costs.*

(1) OJ C 158, 21.6.2008.

Judgment of the General Court of 10 September 2010 — MPDV Mikrolab v OHIM (ROI ANALYZER)

(Case T-233/08) (1)

(Community trade mark — Application for Community word mark ROI ANALYZER — Absolute ground for refusal — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 40/94 (now Article 7(1)(b) and (c) of Regulation (EC) No 207/2009))

(2010/C 288/65)

Language of the case: German

Parties

Applicants: MPDV Mikrolab GmbH, Mikroprozessordatenverarbeitung und Mikroprozessorlabor (Mosbach, Germany) (represented by: W. Göpfert, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 15 April 2008 (Case R 1525/2006-4) concerning the registration of the word sign ROI ANALYZER as a Community trade mark.

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders MPDV Mikrolab GmbH, Mikroprozessordatenverarbeitung und Mikroprozessorlabor to pay the costs.*

(1) OJ C 223, 30.8.2008.

Judgment of the General Court of 9 September 2010 — Evropaïki Dynamiki v Commission

(Case T-387/08) (1)

(Public service contracts — Publications Office's tendering procedure — Provision of computing services — Rejection of a tenderer's bid — Action for annulment — Award criteria and sub-criteria — Obligation to state the reasons on which the decision is based — Equal treatment — Transparency — Manifest error of assessment — Misuse of powers — Claim for damages)

(2010/C 288/66)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis and P. Katsimani, lawyers)

Defendant: European Commission (represented by: E. Manhaeve and N. Bambara, Agents, and by J. Stuyck, lawyer)

Re:

Application (i) for annulment of the decision of the Publications Office of the European Union of 20 June 2008 rejecting the tender submitted by the applicant in Call for Tender AO 10185 for computing services — maintenance of the SEI-BUD/AMD/CR systems and related services (OJ 2008/S 43-058884) and of the decision to award the contract to another tenderer, and (ii) for damages

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE to bear 90 % of its own costs and to pay 90 % of the costs incurred by the European Commission, and the latter to bear 10 % of its own costs and to pay 10 % of the costs incurred by Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE.*

(1) OJ C 301, 22.11.2008.

Judgment of the General Court of 8 September 2010 — Wilfer v OHIM (Representation of the head of a guitar)

(Case T-458/08) (1)

(Community trade mark — Application for a Community figurative mark representing the head of a guitar in silver, grey and brown — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009) — Examination of the facts of its own motion — Article 74(1) of Regulation No 40/94 (now Article 76(1) of Regulation No 207/2009) — Obligation to state reasons — The first sentence of Article 73 of Regulation No 40/94 (now the first sentence of Article 75 of Regulation No 207/2009) — Equal treatment)

(2010/C 288/67)

Language of the case: German

Parties

Applicant: Hans-Peter Wilfer (Markeneukirchen, Germany) (represented by: A. Kockläuner, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 25 July 2008 (Case R 78/2007-4), concerning the registration as a Community trade mark of the figurative sign representing the head of a guitar in the colours silver, grey and brown.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hans-Peter Wilfer to pay the costs.*

([1]) OJ C 6, 10.1.2008.

Judgment of the General Court of 3 September 2010 — Companhia Muller de Bebidas v OHIM — Missiato Industria e Comercio (61 A NOSSA ALEGRIA)

(Case T-472/08) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark 61 A NOSSA ALEGRIA — Earlier national word mark CACHAÇA 51 and earlier national figurative marks Cachaça 51 and Pirassununga 51 — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 288/68)

Language of the case: English

Parties

Applicant: Companhia Muller de Bebidas (represented by: G. Da Cunha Ferreira and I. Bairrão, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Missiato Industria e Comercio Ltda (Santa Rita Do Passa Quatro, Brazil)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 4 July 2008 (Case R 1687/2007-1) relating to opposition proceedings between Companhia Muller de Bebidas and Missiato Industria e Comercio Ltda

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 4 July 2008 (Case R 1687/2007-1).*

2. *Orders OHIM to pay the costs.*

([1]) OJ C 6, 10.1.2009.

Judgment of the General Court of 9 September 2010 — Nadine Trautwein Rolf Trautwein v OHIM (Hunter)

(Case T-505/08) ([1])

(Community trade mark — Application for Community word mark Hunter — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009) — Restriction of the goods designated in the trade mark application)

(2010/C 288/69)

Language of the case: German

Parties

Applicant: Nadine Trautwein Rolf Trautwein GbR, Research and Development (Leopoldshohe, Germany) (represented by: C. Czychowski, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 17 September 2008, as corrected on 5 February 2009 (Case R 1733/2007-1), concerning an application for registration as a Community trade mark of the word sign Hunter.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Nadine Trautwein Rolf Trautwein GbR, Research and Development to pay the costs.*

([1]) OJ C 44, 21.2.2009.

Judgment of the General Court of 8 September 2010 — 4care v OHIM — Laboratorios Diafarm (Acumed)

(Case T-575/08) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark Acumed — Earlier national word mark AQUAMED ACTIVE — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Similarity of the goods — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 288/70)

Language of the case: German

Parties

Applicant: 4care AG (Kiel, Germany) (represented by: S. Redeker and M. Diesbach, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Laboratorios Diafarm, SA (Barberà del Vallès, Spain) (represented by: E. Sugrañes Coca, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 7 October 2008 (Case R 1636/2007-2), relating to opposition proceedings between Laboratorios Diafarm, SA and 4care AG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders 4care AG to pay the costs.*

([1]) OJ C 55, 7.3.2009.

Judgment of the General Court of 9 September 2010 — Carpent Languages v Commission

(Case T-582/08) ([1])

(Public service contracts — Community tendering procedure — Organisation of meetings and conferences — Rejection of a tenderer's bid — Award of the contract to another tenderer — Obligation to state the reasons on which a decision is based — Manifest error of assessment — Equal treatment)

(2010/C 288/71)

Language of the case: French

Parties

Applicant: Carpent Languages (Brussels, Belgium) (represented by: P. Goergen, lawyer)

Defendant: European Commission (represented by: B. Simon and E. Manhaeve, Agents, and by F. Tulkens and V. Ost, lawyers)

Re:

Action brought against the Commission's decision of 30 October 2008 rejecting the applicant's bid for lot No 4 'Provision of teams of interpreters according to the linguistic requirements of each event' of contract notice VT/2008/036 (Multiple framework contracts for meeting and conference organisation services), and the Commission's decision of 17 November 2008 appointing the successful tenderer of lot No 4, and an application for a declaration that the Commission be ordered to pay damages in the event that the General Court does not grant the application for annulment of the decision rejecting the applicant's bid.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Carpent Languages SPRL to pay the costs.*

(1) OJ C 69, 21.3.2009.

Judgment of the General Court of 8 September 2010 — Micro Shaping v OHIM (packaging)

(Case T-64/09) (1)

(Community trade mark — Application for Community figurative mark packaging — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009))

(2010/C 288/72)

Language of the case: German

Parties

Applicant: Micro Shaping Ltd (Goring-by-Sea, Worthing, West Sussex, United Kingdom) (represented by: A. Franke, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 11 December 2008 (Case R 1063/2008-1), concerning an application for registration of the figurative sign packaging as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Micro Shaping Ltd to pay the costs.*

(1) OJ C 102, 1.5.2009.

Judgment of the General Court of 1 September 2010 — Skareby v Commission

(Case T-91/09) (1)

(Appeal — Civil Service — Officials — Reports — Career Development Report — 2005 Assessment procedure — Simplified report established for the period from January to September 2005 — Repetition of all the findings in the 2004 Career Development Report partially annulled subsequent to the judgment under appeal)

(2010/C 288/73)

Language of the case: French

Parties

Appellant: Carina Skareby (Louvain, Belgium) (represented by: S. Rodrigues and C. Bernard-Glanz, lawyers)

Other party to the proceedings: European Commission (represented by: G. Berschied and J. Baquero Cruz, Agents)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 15 December 2008 in Case F-34/07 *Skareby* v *Commission* [2008] ECR II-0000, seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Sets side the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 15 December 2008 in Case F-34/07 Skareby v Commission [2008] ECR I-0000 in so far as the Civil Service Tribunal dismissed the complaint alleging the failure to assess the productivity of Ms Carina Skareby for the period from January to September 2005.*

2. *Sets aside the decision of 18 July 2006 establishing Ms Skareby's Career Evaluation Report for the period from January to September 2005 in so far as it concerns paragraph 6.1 entitled 'Productivity'.*

3. *Dismisses with respect to the remainder the action brought before the Civil Service Tribunal under case number F-34/07.*

4. *Orders the European Commission to bear all the costs relating to the present proceedings and those before the Civil Service Tribunal.*

(1) OJ C 102 of 1.5.2009.

Judgment of the General Court of 9 September 2010 — adp Gauselmann v OHIM — Maclean (Archer Maclean's Mercury)

(Case T-106/09) (1)

(Community trade mark — Opposition proceedings — Application for the Community figurative mark Archer Maclean's Mercury — Earlier national word mark Merkur — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009)

(2010/C 288/74)

Language of the case: English

Parties

Applicant: adp Gauselmann GmbH (Espelkamp, Germany) (represented by: P. Koch Moreno, lawyer)

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: Archer Maclean (Banbury, Oxfordshire, United Kingdom)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 12 January 2009 (Case R 1266/2007-1), relating to opposition proceedings between adp Gauselmann GmbH and Archer Maclean

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders adp Gauselmann GmbH to pay the costs.*

(1) OJ C 113, 16.5.2009.

Judgment of the General Court of 8 September 2010 — Icebreaker v OHIM — Gilmar (ICEBREAKER)

(Case T-112/09) (1)

(Community trade mark — Opposition proceedings — Application for Community word mark ICEBREAKER — Earlier national word mark ICEBERG — Relative ground for refusal — Likelihood of confusion — Partial refusal to register — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 288/75)

Language of the case: English

Parties

Applicant: Icebreaker Ltd (Wellington, New Zealand) (represented by: L. Prehn, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Gilmar SpA (San Giovanni in Marignano, Italy) (represented by: P. Perani and P. Pozzi, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 15 January 2009 (Case R 1536/2007-4) relating to opposition proceedings between Gilmar SpA and Icebreaker Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Icebreaker Ltd to bear the costs.*

(1) OJ C 113, 16.5.2009.

Judgment of the General Court of 8 September 2010 — Quinta do Portal v OHIM — Vallegre (PORTO ALEGRE)

(Case T-369/09) (1)

(Community trade mark — Invalidity proceedings — Community word mark PORTO ALEGRE — Earlier national word mark VISTA ALEGRE — Relative grounds for refusal — Likelihood of confusion — Article 8(1)(b) and Article 53(1)(a) of Regulation (EC) No 207/2009)

(2010/C 288/76)

Language of the case: Portuguese

Parties

Applicant: Sociedade Quinta do Portal SA (Porto, Portugal) (represented by: B. Belchior, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Novais Gonçalves, Agent)

Other party to the proceedings before the Board of Appeal of OHIM: Vallegre, Vinhos do Porto, SA (Sabrosa, Portugal) (represented by: P. López Ronda and G. Macias Bonilla, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 18 June 2009 (Case R 1012/2008-1) concerning invalidity proceedings between Vallegre, Vinhos do Porto, SA and Sociedade Quinta do Portal SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sociedade Quinta do Portal SA to pay the costs.*

(1) OJ C 297, 5.12.2009.

Order of the General Court of 29 July 2010 — Duta v Court of Justice

(Case T-475/08 P) (1)

(Appeal — Civil service — Temporary staff — Recruitment — Post as Legal Secretary — Appeal manifestly inadmissible)

(2010/C 288/77)

Language of the case: French

Parties

Appellant: Radu Duta (Luxembourg, Luxembourg) (represented by: F. Krieg, lawyer)

Other party to the proceedings: Court of Justice of the European Union (represented by: initially by M. Schauss, then by A. Placco, acting as Agents)

Re:

Appeal brought against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 4 September 2008 in Case F-103/07 *Duta* v *Court of Justice*, not yet published in the ECR, and seeking to have that judgment set aside.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Radu Dutashall bear his own costs and pay those incurred by the Court of Justice of the European Union in the present proceedings.*

(1) OJ C 167, 18.7.2009.

Order of the General Court of 2 September 2010 — Schemaventotto v Commission

(Case T-58/09) [1]

(Action for annulment — Concentrations — Abandonment of an intended concentration — Decision to close the procedure opened under Article 21(4) of Regulation (EC) No 139/2004 — Act not amenable to review — Inadmissibility)

(2010/C 288/78)

Language of the case: Italian

Parties

Applicant: Schemaventotto SpA (Milan, Italy) (represented by: M. Siragusa, G. Scassellati Sforzolini, G. Rizza and M. Piergiovanni, lawyers)

Defendant: European Commission (represented by: V. Di Bucci and É. Gippini Fournier, acting as Agents)

Intervener in support of the applicant: Abertis Infraestructuras, SA (Barcelona, Spain) (represented by: M. Roca Junyent and P. Callol García, lawyers)

Re:

Action for annulment of the decision or decisions allegedly contained in the Commission's letter of 13 August 2008 concerning the proceeding opened under Article 21(4) of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1) in relation to the concentration between the intervener and Autostrade SpA (Case COMP/M.4388 Abertis v Autostrade)

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Schemaventotto SpA shall bear its own costs and pay those incurred by the European Commission.*

3. *Abertis Infraestructuras, SA shall bear its own costs..*

[1] OJ C 82, 4.4.2009.

Order of the President of the General Court of 8 September 2010 — Noko Ngele v Commission

(Case T-15/10 R II R)

(Interim Relief — Application for Interim Measures — New Application — Inadmissibility)

(2010/C 288/79)

Language of the case: French

Parties

Applicant: Mariyus Noko Ngele (Brussels, Belgium) (represented by: F. Sabakunzi, lawyer)

Defendant: European Commission (represented by: A. Bordes, Agent)

Re:

Application for, in essence, a declaration that the Commission minutes of 27 May 2009 ((2009) 1874 final) are unlawful, in so far as it appears therein that the Commission decided to grant legal assistance to one of its former members and to a number of its agents.

Operative part of the order

1. *The application for interim measures is dismissed;*

2. *The costs are reserved.*

Action brought on 23 July 2010 — Hartmann-Lamboy v OHIM — Diptyque (DYNIQUE)

(Case T-305/10)

(2010/C 288/80)

Language in which the application was lodged: German

Parties

Applicant: Marlies Hartmann-Lamboy (Westerburg, Germany) (represented by: R. Loos, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: DIPTYQUE SAS (Paris, France)

Form of order sought

— Annul, in part, the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 May 2010 in Case R 1217/2009-1 or amend it in so far as the applicant was unsuccessful;

— order the Office for Harmonisation in the Internal Market to pay the costs of the opposition proceedings, the appeal and the proceedings before the General Court.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark DYNIQUE for goods and services in classes 3, 41 and 44.

Proprietor of the mark or sign cited in the opposition proceedings: DIPTYQUE SAS

Mark or sign cited in opposition: Word mark DIPTYQUE for goods and services in classes 3, 4 and 35

Decision of the Opposition Division: The opposition was upheld.

Decision of the Board of Appeal: The appeal was dismissed in part.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 [1] since there is no likelihood of confusion between the marks at issue.

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 3 August 2010 — Chabou v OHIM — Chalou Kleiderfabrik (CHABOU)

(Case T-323/10)

(2010/C 288/81)

Language in which the application was lodged: German

Parties

Applicant: Chickmouza Chabou (Rheine, Germany) (represented by: K.-J. Triebold, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Chalou Kleiderfabrik GmbH (Herschweiler-Pettersheim, Germany)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 May 2010 in Case R 1165/2009-1 or amend that decision and reject the opposition

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark CHABOU for goods in class 25.

Proprietor of the mark or sign cited in the opposition proceedings: Chalou Kleiderfabrik GmbH.

Mark or sign cited in opposition: Word mark Chalou, registered as a national and international trade mark for goods in class 25.

Decision of the Opposition Division: The opposition was upheld.

Decision of the Board of Appeal: The appeal was dismissed.

Pleas in law: The contested decision fails to take account of the special circumstances of the present case and, instead, applies the established principles concerning the issues of the similarity of signs and of protected goods and services in the light of the likelihood of confusion in a purely formulaic and mechanical fashion, without sufficient regard to the specific aspects of the case and the requisite global assessment of all the circumstances.

Action brought on 3 August 2010 — Iliad and Others v Commission

(Case T-325/10)

(2010/C 288/82)

Language of the case: French

Parties

Applicants: Iliad SA (Paris, France), Free infrastructure SAS (Paris) and Free SA (Paris) (represented by: T. Cabot, lawyer)

Defendant: European Commission

Form of order sought

— declare the present application admissible;

— annul European Commission Decision of 30 September 2009 approving the public financing of EUR 59 million for the planned very-high-speed broadband network in the department of Hauts-de-Seine, pursuant to Article 263 TFEU;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seek the annulment of Commission Decision C(2009) 7426 final of 30 September 2009, [1] declaring that the compensation for a public service charge of EUR 59 million, granted by the French authorities to a consortium of undertakings for the establishment and operation of a very-high-speed broadband electronic communications network (THD 92 project) in the department of Hauts-de-Seine does not constitute State aid.

In support of their action the applicants put forward three pleas in law:

— infringement of Article 107(1) TFEU, in so far as the Commission has not complied with any of the four criteria set out in the *Altmark* [2] case-law holding that the measure concerned did not constitute State aid;

— infringement of the obligation to state reasons for a decision, in so far as the contested decision does not contain sufficient evidence to conclude that all the conditions for the application of the *Altmark* case-law have been fulfilled;

— infringement of the obligation to initiate the formal investigation procedure provided for in Article 108(2) TFEU, in so far as all the evidence obtained in the preliminary examination procedure, documents describing the size and complexity of the examination to be carried out and the partially incomplete and inadequate content of the contested decision, show that the Commission took the contested decision despite the fact that it experienced serious difficulties in assessing whether the measure concerned was compatible with the common market.

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[1] State aid N 331/2008 — France.

[2] Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg* [2003] ECR I-7747.

Action brought on 10 August 2010 — Fraas v OHIM (Light grey, dark grey, beige, dark red and brown coloured checked pattern)

(Case T-326/10)

(2010/C 288/83)

Language in which the application was lodged: German

Parties

Applicant: V. Fraas GmbH (Helmbrechts-Wüstenselbitz, Germany) (represented by G. Würtenberger and R. Kunze, lawyers)

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

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 7 June 2010 in Case R 188/2010-4;

— Order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark representing a light grey, dark grey, beige, dark red and brown coloured checked pattern, for goods in Classes 18, 24 and 25.

Decision of the Examiner: Registration was refused.

Decision of the Board of Appeal: The appeal was dismissed.

Pleas in law: Infringement of Article 7(1)(b) in conjunction with Article 7(2) of Regulation (EC) No 207/2009 [1] since the Community trade mark concerned does have distinctive character, and infringement of Articles 75 and 76 of Regulation (EC) No 207/2009 as the Board of Appeal did not address the applicant's extensive factual and legal submissions.

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 10 August 2010 — Fraas v OHIM (Black, dark grey, light grey and dark red coloured checked pattern)

(Case T-327/10)

(2010/C 288/84)

Language in which the application was lodged: German

Parties

Applicant: V. Fraas GmbH (Helmbrechts-Wüstenselbitz, Germany) (represented by G. Würtenberger and R. Kunze, lawyers)

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

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 7 June 2010 in Case R 189/2010-4;

— Order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark representing a black, dark grey, light grey and dark red coloured checked pattern, for goods in Classes 18, 24 and 25.

Decision of the Examiner: Registration was refused.

Decision of the Board of Appeal: The appeal was dismissed.

Pleas in law: Infringement of Article 7(1)(b) in conjunction with Article 7(2) of Regulation (EC) No 207/2009 [1] since the Community trade mark concerned does have distinctive character, and infringement of Articles 75 and 76 of Regulation (EC) No 207/2009 as the Board of Appeal did not address the applicant's extensive factual and legal submissions.

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 10 August 2010 — Fraas v OHIM (Dark grey, light grey, beige and dark red coloured checked pattern)

(Case T-328/10)

(2010/C 288/85)

Language in which the application was lodged: German

Parties

Applicant: V. Fraas GmbH (Helmbrechts-Wüstenselbitz, Germany) (represented by G. Würtenberger and R. Kunze, lawyers)

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

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 7 June 2010 in Case R 190/2010-4;

— Order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark representing a dark grey, light grey, beige and dark red coloured checked pattern, for goods in Classes 18, 24 and 25.

Decision of the Examiner: Registration was refused.

Decision of the Board of Appeal: The appeal was dismissed.

Pleas in law: Infringement of Article 7(1)(b) in conjunction with Article 7(2) of Regulation (EC) No 207/2009 [1] since the Community trade mark concerned does have distinctive character, and infringement of Articles 75 and 76 of Regulation (EC) No 207/2009 as the Board of Appeal did not address the applicant's extensive factual and legal submissions.

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Pleas in law and main arguments

Community trade mark concerned: Figurative mark representing a black, grey, beige and dark red coloured checked pattern, for goods in Classes 18, 24 and 25.

Decision of the Examiner: Registration was refused.

Decision of the Board of Appeal: The appeal was dismissed.

Pleas in law: Infringement of Article 7(1)(b) in conjunction with Article 7(2) of Regulation (EC) No 207/2009 [1] since the Community trade mark concerned does have distinctive character, and infringement of Articles 75 and 76 of Regulation (EC) No 207/2009 as the Board of Appeal did not address the applicant's extensive factual and legal submissions.

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 10 August 2010 — Fraas v OHIM (Black, grey, beige and dark red coloured checked pattern)

(Case T-329/10)

(2010/C 288/86)

Language in which the application was lodged: German

Parties

Applicant: V. Fraas GmbH (Helmbrechts-Wüstenselbitz, Germany) (represented by G. Würtenberger and R. Kunze, lawyers)

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

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 7 June 2010 in Case R 191/2010-4;

— Order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings.

Action brought on 10 August 2010 — Leifheit v OHIM — Vermop Salmon (Twist System)

(Case T-334/10)

(2010/C 288/87)

Language in which the application was lodged: German

Parties

Applicant: Leifheit AG (Nassau, Germany) (represented by: G. Hasselblatt and V. Töbelmann, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Vermop Salmon GmbH (Gilching, Germany)

Form of order sought

— Annul the decisions of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 May 2010 in joined Cases R 924/2009-1 and R 1013/2009-1;

— Order OHIM to bear its own costs and to pay the costs incurred by the applicant;

— In the event that Vermop Salmon intervenes in the proceedings, order the intervener to bear its own costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the word mark 'Twist System' for goods in Classes 7, 8 and 21

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity: Vermop Salmon GmbH

Trade mark right of applicant for the declaration: the word mark 'TWIX' for goods in Class 21 and the word mark 'TWIXTER' for goods in Classes 9, 12, 21, 22 and 25

Decision of the Cancellation Division: The application for a declaration of invalidity was partially upheld

Decision of the Board of Appeal: Vermop Salmon's appeal to have the applicant's mark declared invalid in respect of additional goods was upheld and the applicant's appeal was dismissed

Pleas in law: Infringement of Article 63(1) of Regulation (EC) No 207/2009 [1] as the First Board of Appeal of OHIM did not examine whether the evidence of use put forward by Vermop Salmon is sufficient to prove genuine use of the earlier Community trade marks; infringement of the first and second sentences of Article 57(2) in conjunction with Article 42(2) of Regulation No 207/2009 as the evidence of use which Vermop Salmon placed on the case-file does not prove genuine use of the earlier Community trade marks; and infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 as the marks at issue are not similar.

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 17 August 2010 — Seatech International and Others v Council and Commission

(Case T-337/10)

(2010/C 288/88)

Language of the case: French

Parties

Applicants: Seatech International, Inc. (Cartagena, Columbia), Tuna Atlantic, Ltda (Cartagena) and Comextun, Ltda (Cartagena) (represented by: F. Foucault, lawyer)

Defendants: Council of the European Union and European Commission

Forms of order sought

— annulment of Commission Regulation No 468/2010 of 28 May 2010 in so far as it designates the vessel Marta Lucia R as a vessel engaged in IUU fishing;

— annulment of Council Regulation No 1005/2008 of 29 September 2008 and, consequently, of Commission Regulation No 468/2010, in so far as it implements a procedure for designating vessels engaged in IUU fishing on the ground that it does not respect the principle of *audi alteram partem* and gives rise to discrimination;

— a declaration that the vessel Marta Lucia R is not engaged in IUU fishing activities.

Pleas in law and main arguments

By the present action, the applicants, owner and operator of the fishing vessel Marta Lucia R, as well as purchaser of caught fish, seek the annulment of Commission Regulation (EU) No 468/2010 of 28 May 2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing [1] ('the EU IUU list'), designating the vessel Marta Lucia R as a vessel engaged in illegal, unreported and unregulated fishing. The applicants also seek annulment of Council Regulation (EC) No 1005/2008 [2] establishing the procedure for drawing up that EU IUU list.

The applicants submit that the vessel Marta Lucia R was included on the European Union IUU list merely because it had been included on a list of vessels considered to be engaged in illegal, unreported and unregulated fishing established by the Inter-American Tropical Tuna Commission ('the IATTC IUU list').

The applicants put forward a number of pleas in law in support of their action, including:

— infringement of the principle of *audi alteram partem* and of the rights of the defence, in that the vessel Marta Lucia R was included in the IATTC IUU list without procedural requirements being observed to ensure that the party concerned was heard;

— infringement of the principle of non.-discrimination, as the vessel Marta Lucia R was included automatically in the EU IUU list following its inclusion in the IATTC IUU list, whereas other vessels active in the territory of the Member States were included in the EU IUU list only after a procedure had been held in which all parties were heard;

— the decisions taken by the Inter-American Tropical Tuna Commission are vitiated by illegality because that commission exceeded its powers, as it was entrusted with a mandate only of information and investigation on species preservation, and was not granted authority to take binding decisions; and

— there are no facts supporting a finding that the fishing done by the vessel Marta Lucia R is illegal, unreported and unregulated as those terms are understood in the Community.

(1) OJ 2010 L 131, p. 22.

(2) Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ 2008 L 286, p. 1).

Action brought on 18 August 2010 — Commission v Tornasol Films

(Case T-338/10)

(2010/C 288/89)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: A.-M Rouchaud-Joët, Agent, and R. Alonso Pérez-Villaneuva, lawyer)

Defendant: Tornasol Films SA (Madrid, Spain)

Form of order sought

— order the defendant to pay the applicant EUR 19 554,00 plus default interest calculated at the rate of 5 % per annum from 14 April 2009, and

— order Tornasol Films SA to pay all the costs incurred in the present proceedings.

Pleas in law and main arguments

The present action concerns the alleged breach of a contract concluded between the Commission and the defendant within the framework of the MEDIA Plus Programme.

The wording of that contract stipulated that the recipient is to deposit the equivalent of the amount received as Community support in a specified account within 30 days of the start of production and to submit to the Commission a reinvestment plan for that amount within six months from the same date.

In support of its form of order, the applicant claims:

— that the defendant has failed to comply with those contractual obligations although it has not presented any arguments and has not disputed the debit note sent by the Commission;

— if the obligations provided for in the contract have been breached by the beneficiary, the wording of the contract allows the Commission to rescind it and require the return of the sums paid as a financial contribution;

— in spite of various reminders and summonses the defendant has not repaid the funds awarded.

Action brought on 9 August 2010 — Cosepuri v EFSA

(Case T-339/10)

(2010/C 288/90)

Language of the case: Italian

Parties

Applicant: Cosepuri Soc. coop. p.a. (Bologna, Italy) (represented by: F. Fiorenza, lawyer)

Defendant: European Food Safety Authority (EFSA)

Form of order sought

— Annul the tender procedure to the extent that it provides for the evaluation of the financial bids to be conducted in secret;

— Annul the decision awarding the contract to the company ANME and any act resulting therefrom;

— Order EFSA to pay damages to Cosepuri;

— Order EFSA to pay the costs.

Pleas in law and main arguments

By contract notice dated 1 March 2010, published in the *Official Journal of the European Union* of 13 March 2010, the European Food Safety Authority (EFSA) launched an open tender procedure for the award of a shuttle service contract in Italy and Europe for a period of 48 months, with an estimated value of EUR 4 000 000, defining as the award criterion the most economically advantageous tender in terms of the criteria stated in the specifications (Document B [in annex to the application]). The applicant company submitted its tender, but the contract in question was awarded to another company.

By the present application, the applicant contests that decision.

By its first plea in law, the applicant alleges infringement of Article 89 of Regulation (EC) No 1605/2002 ([1]) and infringement of the principles of sound administration, transparency, the requirement for publicity and the right of access, because of the failure to conduct in public the procedures for the opening of the technical bids and the awarding of points for the financial bid. In that connection, it is submitted that the price bid cannot be regarded as confidential information.

By its second plea in law, the applicant alleges infringement of Article 100 of Regulation (EC) No 1605/2002, infringement of Regulation (EC) No 1049/2001, ([2]) infringement of the duty to state reasons, the obligation of transparency and of the right of access to documents, since access to the documents was restricted after the contract was awarded, on the grounds that information such as the financial bid and public documents such as vehicle licences were confidential. In that connection, it is argued that the failure to disclose the price bid by the successful tenderer means that the acts were inadequately reasoned.

By its third plea in law, the applicant alleges infringement of Article 100 of Council Regulation (EC) No 1605/2002 of 25 June 2002, infringement of the specifications and a manifest error of reasoning on account of the errors made by the tenders committee in the evaluation of the financial bids.

([1]) 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).

([2]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 20 August 2010 — CTG Luxembourg PSF v Court of Justice

(Case T-340/10)

(2010/C 288/91)

Language of the case: French

Parties

Applicants: Computer Task Group PSF SA Luxembourg (Bertrange, Luxembourg) (represented by: M. Thewes, lawyer)

Defendants: Court of Justice of the European Union

Form of order sought

— order the joining of the present case with the case pending before the Eighth Chamber of the General Court under Case T-170/10;

— annul the decision the Court of Justice of 29 June 2010 to award the contract 'AO 008/2009: 1st and 2nd level support for the users of IT and telephone systems, call centre, end user hardware management' to another tenderer;

— declare the non-contractual liability of the European Union and order the Court of Justice to compensate the applicant for all the loss incurred on account of the contested decisions and appoint an expert to evaluate that loss;

— order the Court of Justice to pay all the costs and expenses.

Pleas in law and main arguments

The pleas in law and arguments put froward by the applicant are identical to those put forward in Case T-170/10 *CTG Luxembourg PSF* v *Court of Justice* [1] concerning the same tendering procedure.

[1] OJ 2010 C 161, p. 48.

Action brought on 23 August 2010 — Hartmann v OHMI — Mölnlycke Health Care (MESILETTE)

(Case T-342/10)

(2010/C 288/92)

Language in which the application was lodged: English

Parties

Applicant: Paul Hartmann AG (Heidenheim, Germany) (represented by: N. Aicher, lawyer)

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

Other party to the proceedings before the Board of Appeal: Mölnlycke Health Care AB (Göteborg, Sweden)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 May 2010 in case R 1222/2009-2, and;

— Order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

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

Community trade mark concerned: The word mark 'MESILETTE', for goods in class 5 — Community trade mark application No 6494025

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

Mark or sign cited: German trade mark registration No 1033551 of the word mark 'MEDINETTE', for goods in class 25; International trade mark registration No 486204 of the word mark 'MEDINETTE', for goods in class 25

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal made an incorrect assessment of the likelihood of confusion, in particular of the similarity of the signs.

Action brought on 18 August 2010 — Etimine and Etiproducts v ECHA

(Case T-343/10)

(2010/C 288/93)

Language of the case: English

Parties

Applicants: Etimine SA (Bettembourg, Luxembourg) and Ab Etiproducts Oy (Espoo, Finland), (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

— Declare the application admissible and well-founded;

— Annul the contested act as it relates to Boric Acid and Disodium Tetraborates;

— Declare the illegality of Commission Regulation (EC) No 790/2009 ([1]) of 10 August 2009 insofar as it relates to Boric Acid and Disodium Tetraborates; and

— Order ECHA to pay all the costs and the expenses of these proceedings.

Pleas in law and main arguments

The applicants seek, pursuant to Article 263 TFEU, the annulment of the decision of European Chemicals Agency to include Boric Acid and Disodium Tetraborates in the candidate list of substances established under Article 59 of Regulation (EC) No 1907/2006 ([2]). In addition, the applicants seek, pursuant to Article 277 TFEU, a declaration as to the illegality of Commission Regulation (EC) No 790/2009 of 10 August 2009 insofar as it relates to Boric Acid and Disodium Tetraborates.

In support of their application, the applicants put forward the following pleas in law:

Firstly, the contested act was adopted in breach of essential procedural requirements and as an error of law because it failed to fulfil the requirements of Article 59 and Annex XV of Regulation (EC) No 1907/2006.

Secondly, the contested act is based on a manifest error of assessment and is in breach of Regulation (EC) No 1907/2006 because ECHA failed to produce evidence and demonstrate that the Borate Substances 'meet the criteria' for classification as toxic to reproduction category 2 under Directive 67/548 ([3]).

In addition, by adopting the contested act, ECHA infringed the EU law principle of proportionality.

Finally, the contested act is based on Commission Regulation (EC) No 790/2009 which is in itself unlawful.

([1]) Commission Regulation (EC) No 790/2009 of 10 August 2009 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2009 L 235, p. 1).

([2]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1).

([3]) Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 1967 196, p. 1)

Action brought on 20 August 2010 — UPS Europe and United Parcel Service Deutschland v Commission

(Case T-344/10)

(2010/C 288/94)

Language of the case: English

Parties

Applicants: UPS Europe NV/SA (Brussels, Belgium) and United Parcel Service Deutschland Inc. & Co. OHG (Neuss, Germany), (represented by: T.R. Ottervanger and E.V.A. Henny, lawyers)

Defendant: European Commission

Form of order sought

— Declare, in accordance with Article 265 TFEU, that the Commission has failed to act by not having defined its position in case C 36/07 (ex NN 25/07) — Germany/Deutsche Post; and

— Order the defendant to pay the costs incurred by the applicants in the proceedings.

Pleas in law and main arguments

By means of the present application, the applicants seek, pursuant to Article 265 TFEU, a declaration that the Commission has failed to act by not having defined its position in case C 36/07 (ex NN 25/07) — Germany/Deutsche Post ((OJ 2007 C 245, p. 21).

In support of their action, the applicants submit that since the Commission has not defined its position in the above mentioned investigation procedure within a reasonable time period, it has breached Articles 7 and 13 of Regulation (EC) No 659/1999 [1].

In addition, by failing to define its position within a reasonable time period, the Commission has also breached the principles of good administration and legal certainty. According to the applicants, the principle of sound administration should have been respected since it is one of the general principles common to the constitutional traditions of the Member States. Moreover, this principle is clearly reflected in Article 41(1) of the Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389).

[1] Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Action brought on 18 August 2010 — Borax Europe v ECHA

(Case T-346/10)

(2010/C 288/95)

Language of the case: English

Parties

Applicant: Borax Europe Ltd (London, United Kingdom) (represented by: K. Nordlander, lawyer and H. Pearson, Solicitor)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

— declare the application for annulment admissible;

— annul the decision by ECHA to identify certain borate substances as 'substances of very high concern' meeting the criteria set out in Article 57(c) of Regulation (EC) No 1907/2006 ('REACH') [1] and to add them to the Candidate List of Substances of Very High Concern for Authorisation ('candidate list') on 18 June 2010 (the 'contested act');

— order ECHA to pay the Applicant's costs for these proceedings.

Pleas in law and main arguments

The Applicant seeks the annulment of the decision by ECHA to identify certain borate substances as 'substances of very high concern' meeting the criteria set out in Article 57(c) REACH and to add them to the candidate list on 18 June 2010. The contested act was brought to the applicant's attention by means of an ECHA press release of 18 June 2010.

The borate substances whose inclusion in the candidate list via the contested act the applicant challenges are: boric acid, CAS No 10043-35-3, EC No 233-139-2; disodium tetraborate, anhydrous; disodium tetraborate decahydrate; disodium tetraborate pentahydrate (CAS Nos 1330-43-4, 1303-96-4, 12179-04-3, EC No 215-540-4) ('borates').

In support of the application, the applicant puts forward three pleas in law.

First ground: the contested act should be annulled as it was based on Annex XV dossiers which contain manifest errors, leading to a breach of an essential procedural requirement in Article 59 of REACH. Those dossiers indicate, as the justification for ECHA action, that borates are currently classified in Part 3 of Annex VI to Regulation (EC) No 1272/2008, which is factually incorrect.

Second ground: ECHA adopted the contested act without discharging its function of performing an 'on the merits' assessment of whether borates meet the criteria referred to in Article 57(c) of REACH. Thus, in adopting the contested act, ECHA committed manifest errors of assessment, exceeded its powers and infringed the principle of good administration.

Third ground: finally, borates do not meet the criteria, referred to in Article 57(c) of REACH, for classification as toxic to reproduction category 1 or 2 under Directive 67/548. Accordingly, they are not 'substances of very high concern' and their inclusion in the candidate list via the contested act infringes Article 59(8) of REACH.

(1) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1)

Action brought on 27 August 2010 — Adelholzener Alpenquellen v OHIM (Shape of a bottle with a relief-like depiction of three mountain summits)

(Case T-347/10)

(2010/C 288/96)

Language in which the application was lodged: German

Parties

Applicant: Adelholzener Alpenquellen GmbH (Siegsdorf, Germany) (represented by O. Rauscher, lawyer)

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

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 June 2010 in Case R 1516/2009-1;

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the three-dimensional mark in the shape of a bottle with a relief-like depiction of three mountain summits for goods in Class 32

Decision of the Examiner: rejection of the application

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Regulation (EC) No 207/2009 (1) as the Community trade mark at issue has distinctive character; infringement of Article 37(2) of Regulation (EC) No 207/2009 as the Board of Appeal should not have based its decision on the absence of a disclaimer; and infringement of Article 75(2) of Regulation (EC) No 207/2009 as the applicant was unable to comment on certain depictions on which the decision was based

(1) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 16 August 2010 — Panzeri v OHIM — Royal Trophy (Royal veste e premia lo sport)

(Case T-348/10)

(2010/C 288/97)

Language in which the application was lodged: Italian

Parties

Applicant: Luigi Panzeri (Monguzzi, Italy) (represented by: C. Galli, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Royal Trophy Srl (Cava di Tirreni, Italy)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of 20 May 2010 and the decision of the Opposition Division of 30 June 2009;

— declare that the applicant's opposition to the application for registration of mark No 5 285 507 is upheld and reject the application for that mark in respect of goods in Class 25 (Clothing) and Class 28 (gymnastic and sporting articles not included in other classes) and/or adopt such other measure as the Court may deem appropriate;

— order Royal Trophy Srl to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Royal Trophy Srl

Community trade mark concerned: Figurative mark 'Royal veste e premia lo sport' (Registration application No 5 285 507) for goods in Classes 25 and 28

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

Mark or sign cited in opposition: Community word mark (No 1533504) and international word mark (No 5769068) 'VESTE LO SPORT' for goods in Class 25, and figurative mark 'PANZERI veste lo sport', not registered but used in the course of trade, for 'clothing and, in particular, sportswear'

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Misapplication of Article 8(1)(b) of Regulation No 207/2009 on the Community trade mark

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Action brought on 26 August 2010 — Milux v OHMI (OVUMCONTROL)

(Case T-349/10)

(2010/C 288/98)

Language of the case: English

Parties

Applicant: Milux Holding SA (Luxembourg, Luxembourg) (represented by: J. Bojs, lawyer)

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

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 29 June 2010 in case R 1436/2009-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'OVUM-CONTROL' for goods and services in classes 9, 10 and 44

Decision of the examiner: Refused the application for a Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Council Regulation No 207/2009, as the Board of Appeal misapplied the principle of non-discrimination to the facts in this case; in the alternative, infringement of Articles 7(1)(b) and 7(1)(c) of Council Regulation No 207/2009, as the Board of Appeal erred in its conclusion that the trade mark applied for does not possess sufficient inherent distinctiveness.

Action brought on 26 August 2010 — Milux v OHMI (HEARTCONTROL)

(Case T-350/10)

(2010/C 288/99)

Language of the case: English

Parties

Applicant: Milux Holding SA (Luxembourg, Luxembourg) (represented by: J. Bojs, lawyer)

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

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 2 July 2010 in case R 1437/2009-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'HEART-CONTROL' for goods and services in classes 9, 10 and 44

Decision of the examiner: Refused the application for a Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Council Regulation No 207/2009, as the Board of Appeal misapplied the principle of non-discrimination to the facts in this case; in the alternative, infringement of Articles 7(1)(b) and 7(1)(c) of Council Regulation No 207/2009, as the Board of Appeal erred in its conclusion that the trade mark applied for does not possess sufficient inherent distinctiveness.

Action brought on 26 August 2010 — Milux v OHMI (VESICACONTROL)

(Case T-351/10)

(2010/C 288/100)

Language of the case: English

Parties

Applicant: Milux Holding SA (Luxembourg, Luxembourg) (represented by: J. Bojs, lawyer)

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

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 28 July 2010 in case R 1439/2009-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'VESICA-CONTROL' for goods and services in classes 9, 10 and 44

Decision of the examiner: Refused the application for a Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Council Regulation No 207/2009, as the Board of Appeal misapplied the principle of non-discrimination and equal treatment to the facts in this case; in the alternative, infringement of Articles 7(1)(b) and 7(1)(c) of Council Regulation No 207/2009, as the Board of Appeal erred in its conclusion that the trade mark applied for does not possess sufficient inherent distinctiveness.

Action brought on 26 August 2010 — Milux v OHMI (RECTALCONTROL)

(Case T-352/10)

(2010/C 288/101)

Language of the case: English

Parties

Applicant: Milux Holding SA (Luxembourg, Luxembourg) (represented by: J. Bojs, lawyer)

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

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 28 July 2010 in case R 1443/2009-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'RECTAL-CONTROL' for goods and services in classes 9, 10 and 44

Decision of the examiner: Refused the application for a Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Council Regulation No 207/2009, as the Board of Appeal misapplied the principle of non-discrimination and equal treatment to the facts in this case; in the alternative, infringement of Articles 7(1)(b) and 7(1)(c) of Council Regulation No 207/2009, as the Board of Appeal erred in its conclusion that the trade mark applied for does not possess sufficient inherent distinctiveness.

Action brought on 31 August 2010 — Lito Maieftiko Ginaikologiko kai Khirourgiko Kentro v Commission

(Case T-353/10)

(2010/C 288/102)

Language of the case: Greek

Parties

Applicant: Lito Maieftiko Ginaikologiko kai Khirourgiko Kentro A.E. (Athens, Greece) (represented by: E. Tzannini, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— uphold the present action;

— annul the contested debit note;

— take account of the applicant's submissions if it holds that the amounts as accepted by the applicant in its memorandum of 5 November 2009 are to be refunded;

— annul the contested measure also in so far as it relates to third instalment which has not been paid;

— set any amounts that are to be refunded against the amounts never paid by way of the third instalment, which has remained outstanding for five years;

— hold that the present action constitutes an event interrupting the limitation period for the claim for payment of the third instalment;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, the applicant seeks annulment of the Commission decision which is contained in debit note No 3241007362 of 22 July 2010 and relates to the applicant's participation in DICOEMS research programme No 507760 and to implementation of the results of financial audit No 09-BA74-028.

The applicant puts forward the following grounds in support of its pleas:

— infringement of the general principle of law that an unfavourable measure must incorporate a statement of reasons in order for the legality of the reasoning to be reviewed, since the contested debit note does not state any reasons;

— error in the assessment of the facts, since the defendant did not take account of the evidence and in particular the timesheets which the applicant submitted as an attachment to its memorandum of 5 November 2009;

— error of law and defective reasoning, since the defendant did not take account of the applicant's actual submissions and rejected them in a wrongful manner and without stating reasons;

— infringement of the principle of good faith and of legitimate expectations, since the defendant wrongfully failed to pay the applicant the final instalment of the programme and nullified all its research work, five years after the programme's closure.

Action brought on 23 August 2010 — Nike International/OHMI — Deichmann (VICTORY RED)

(Case T-356/10)

(2010/C 288/103)

Language in which the application was lodged: English

Parties

Applicant: Nike International Ltd (Oregon, U.S.A.) (represented by: M. De Justo Bailey, lawyer)

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

Other party to the proceedings before the Board of Appeal: Deichmann SE (Essen, Germany)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office For Harmonisation in the Internal Market (Trade Marks and Designs) of 18 May 2010 in case R 1309/2009-2;

— Order the defendant to pay the costs of the proceedings, and;

— Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, should it become an intervening party in this case.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'VICTORY RED', for goods in classes 18 and 28

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: German trade mark registration No 30318528 of the word mark 'Victory', for goods in classes 18, 25 and 28; International trade mark registration No 819143 of the word mark 'Victory', for goods in classes 18, 25 and 28

Decision of the Opposition Division: Upheld the opposition for all of the contested goods and rejected the application in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal made an incorrect assessment of the likelihood of confusion, in particular of the similarity of the signs.

Action brought on 27 August 2010 — Kraft Foods Schweiz v OHIM — Compañía Nacional de Chocolates (CORONA)

(Case T-357/10)

(2010/C 288/104)

Language in which the application was lodged: English

Parties

Applicant: Kraft Foods Schweiz Holding GmbH (Zug, Switzerland) (represented by: P. Péters and T. de Haan, lawyers)

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

Other party to the proceedings before the Board of Appeal: Compañía Nacional de Chocolates SA (Medellín, Colombia)

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 29 June 2010 in case R 696/2009-4; and

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

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark 'CORONA', for goods in class 30

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

Mark or sign cited: Estonian trade mark registration No 20671 of the word mark 'KARUNA', for goods in class 30; Latvian trade mark registration No M36592 of the word mark 'KARUNA', for goods in class 30; Lithuanian trade mark registration No 28143 of the word mark 'KARŪNA', for goods in class 30

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Annulled the decision of the opposition division and rejected the opposition

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal incorrectly excluded likelihood of confusion; infringement of Article 8(5) of Council Regulation No 207/2009, as the Board of Appeal wrongly assessed that the marks are not similar or identical.

Action brought on 25 August 2010 — Ecologistas en Acción — CODA v Commission

(Case T-359/10)

(2010/C 288/105)

Language of the case: Spanish

Parties

Applicant: Ecologistas en Acción — CODA (represented by: J. Ramos Segarra, lawyer)

Defendant: European Commission

Form of order sought

— annul the decision of 30 June 2010 of the Secretariat General of the European Commission refusing access to the documents requested by the applicant in the proceedings GESTDEM 2010/957 and declare that the applicant is entitled to receive the information requested:

  — letter of 7 January 2010 from the Servicio de Asesoramiento Urbanístico del Ajuntament de Valencia;

  — communication of 17 January 2010 by the Spanish authorities regarding EU-PILOT 724/09/2ENVI;

  — letter of 21 January 2010 from the Generalität Valenciana — Directorate General for Environmental Management;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant association challenges the decision refusing its request for access to certain documents submitted by Spain in the investigation concerning EU-PILOT-ENVI 72409, which is intended to implement the Special Protection and Internal Reform Plan (PEPRI) for the district of Cabanyal in the City of Valencia, approved by the Ayuntamiento de Valencia and the Generalidad de Valencia.

In support of its forms of order the applicant claims that the contested decision infringes Articles 3, 4 and 6 of Regulation (EC) No 1367/2006. [1]

The applicant states in that regard that, contrary to the Commission's submissions, there are no domestic legal proceedings clearly connected to the procedure initiated by the Commission. The legal proceedings to which the defendant refers concern non-compliance with domestic laws which do not in any way regulate the environment or refer to the environmental impact assessment.

Further, the applicant takes the view that, in any event, the disclosure of the information requested cannot prejudice the environmental protection to which that information refers.

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[1] Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

Action brought on 27 August 2010 — Vtesse Networks v Commission

(Case T-362/10)

(2010/C 288/106)

Language of the case: English

Parties

Applicants: Vtesse Networks Ltd (Hertford, United Kingdom), (represented by: H. Mercer QC, Barrister)

Defendant: European Commission

Form of order sought

— Declare the application admissible;

— Annul paragraph 72 of Commission Decision C(2010) 3204 in state aid case N 461/2009 (OJ 2010 C 162, p. 1); and

— Order the defendant to pay the applicant's costs incurred in this action.

Pleas in law and main arguments

By means of the present application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of Commission Decision C(2010) 3204 in state aid case N 461/2009 (OJ 2010 C 162, p. 1), whereby it has been decided that the aid measure 'Cornwall & Isles of Scilly Next Generation Broadband', providing aid from the European Regional Development Fund to support the deployment of next generation broadband networks in the Cornwall & Isles of Scilly region, is compatible with Article 107(3)(c) TFEU.

In support of their action, the applicant submits the following pleas in law:

Firstly, the applicant alleges that the Commission committed manifest errors in the appreciation of the facts, in particular that the Commission found that:

(a) There was an open, non-discriminatory and competitive tender process when it should have found that competition had been eliminated in relation to the tender;

(b) Existing infrastructure was available to all bidders on request when the incumbent operator has openly admitted that it did not use infrastructure which was packaged into products and available to all bidders on request;

(c) The overall effect on competition was positive when competition was eliminated by the actions of the incumbent operator.

In addition, the applicant contends that the Commission fails to apply and/or breaches Article 102 TFEU so that the assessment in the Commission Decision C(2010)3204 of the impact of the measure on competition is invalid and that therefore the said decision is unlawful and not within Article 107(3)(c) TFEU, the relevant abuses for Article 102 TFEU being:

(a) Unlawful bundling with respect to existing infrastructure of dark fibre with active electronics;

(b) Refusal of access for competing bidders to fibre and/or ducts;

(c) Margin squeeze abuse through bundling fibre with active electronics to construct products which do not permit the Applicant or other competitors to compete in the Tender Process.

Finally, the applicant argues that the Commission breaches its rights of defence, including in particular failing to open a full investigation under the procedure in Article 108(2) TFEU on the following grounds:

(a) In the light of the first and second pleas, it was unlawful to terminate the enquiry under Article 108(3) TFEU and/or not to open a full investigation under Article 108(2) TFEU;

(b) Termination of the investigation prior to a formal investigation deprives the Applicant of its procedural rights;

(c) Breach of rights of defence through not giving the applicant an opportunity to refute arguments and/or evidence presented by the UK authorities.

Action brought on 27 August 2010 — Abbott Laboratories v OHIM (RESTORE)

(Case T-363/10)

(2010/C 288/107)

Language in which the application was lodged: German

Parties

Applicant: Abbott Laboratories (Abbott Park, Illinois, United States of America) (represented by M. Kinkeldey, S. Schäffler and J. Springer, lawyers)

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

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 June 2010 in Case R 1560/2009-1;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'RESTORE' for goods in Class 10

Decision of the Examiner: rejection of the application

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law:

Infringement of the right to be heard as the Board of Appeal referred in its decision to evidence which was not adduced by the applicant;

Infringement of Article 7(1)(c) of Regulation (EC) No 207/2009 [1] as the mark applied for is not a term which directly describes the goods covered by the application;

Infringement of Article 7(1)(b) of Regulation (EC) No 207/2009 as the mark applied for has the required distinctive character.

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 2 September 2010 — Duravit and Others v Commission

(Case T-364/10)

(2010/C 288/108)

Language of the case: German

Parties

Applicants: Duravit AG (Hornberg, Germany); Duravit SA (Bischwiller, France); and Duravit BeLux BVBA (Overijse, Belgium) (represented by: R. Bechtold, U. Soltész and C. von Köckritz, lawyers)

Defendant: European Commission

Form of order sought

— Pursuant to Article 263(4) TFEU, declare Articles 1(1), 2 and 3 of the decision of the European Commission of 23 June 2010, C(2010) 4185 final, in Case COMP/39092 — Bathroom fittings and fixtures, to be invalid in so far as they concern the applicants;

— In the alternative, reduce the amount of the fine imposed on the applicant under Article 2(9) of the decision;

— Pursuant to Article 87(2) of the Rules of Procedure of the General Court, order the Commission to pay the applicants' costs.

Pleas in law and main arguments

The applicants have brought this action against Commission decision C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom fittings and fixtures. By the contested decision, fines were imposed on the applicants and other undertakings for infringement of Article 101 TFEU and Article 53 EEA. According to the Commission, the applicants participated in a continuous agreement or concerted practice in the bathroom fittings and fixtures sector in Belgium, Germany, France, Italy, the Netherlands and Austria.

In support of their action, the applicants submit nine pleas in law.

In their first plea, the applicants allege that the Commission has not produced sufficient evidence to prove that the applicants participated in price-fixing or other anti-competitive conduct. The Commission misunderstood the burden and standard of proof required to establish an infringement of Article 101 TFEU in Commission proceedings, and imposed excessive requirements on the applicants in the Commission proceeding in relation to the provision of positive proof and the burden of proof.

In their second plea, the applicants claim that the Commission held the applicants responsible for the whole of the infringement in relation to the relevant goods on account of their participation in alleged 'cartel meetings' of a German umbrella Association for the relevant goods, without establishing that the applicants had taken part in discussions about the relevant goods. In that regard, the applicants argue that the Commission incorrectly, immediately, and without taking account of the actual business and legal background, categorised the discussions in the German umbrella association as deliberate restrictions on competition.

The applicants further claim, in their third plea, that the Commission has failed to prove anti-competitive conduct on the German sanitary ceramics market. The applicants complain, in that regard, that the Commission unlawfully categorised discussions at a German ceramics association as price-fixing and deliberate restrictions on competition, and that the Commission infringed the applicants' right to a fair and unprejudiced proceeding by making improper incriminating findings on the basis of clearly irrelevant evidence.

In their fourth plea, the applicants claim that they did not participate in price-fixing in France or Belgium. In the view of the applicants, the Commission found, wrongly, that discussions at Belgian and French ceramic associations involved price-fixing and also wrongly assessed the duration of the alleged infringement and thereby misapplied Article 101 TFEU.

In the context of the fifth plea, the applicants claim that the Commission found, incorrectly, that the actions on the market for wardrobe doors, shower partitions and ceramics were a single and continuous infringement, and thereby misapplied Article 101 TFEU. In that respect, the applicants allege that the criteria developed in the case-law for establishing a single and continuous infringement were not met.

For their sixth plea, the applicants claim that the Commission clearly infringed their rights of the defence and their right to an oral hearing under Articles 12 and 14 of Regulation (EC) No 773/2004 [1] on account of the excessive length of the proceeding and because of the replacement of all the internal Commission staff taking part in the decisionmaking process after the oral hearing.

In the context of their seventh plea, the applicants claim that the Commission wrongly used its Guidelines on the setting of the fines [2] to calculate the amount of the fine, in that, since the entry into force of the Treaty of Lisbon, those guidelines are invalid on the basis that they infringe Article 290(1) TFEU and Article 52(1) of the Charter of Fundamental Rights of the European Union.

In their eighth plea, the applicants claim that the Commission's calculation of the amount of the fine was erroneous, since the Commission did not take account of the low level of the applicants' alleged involvement, but rather assessed as one the gravity of the infringement for all the undertakings concerned. In the applicants' opinion, that breaches the principle of individual responsibility.

Lastly, in the context of the ninth plea, the applicants complain that the level of the fine imposed breaches the principles of proportionality and equal treatment, in that the applicants did not participate in the most serious distortions of competition.

[1] Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 [EC] and 82 [EC] (OJ 2004 L 123, p. 18).

[2] Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2).

Appeal brought on 1 September 2010 by Luigi Marcuccio against the order of the Civil Service Tribunal made on 22 June 2010 in Case F-78/09, Marcuccio v Commission

(Case T-366/10 P)

(2010/C 288/109)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the Court should:

— in any event, set aside in its entirety and without exception the order under appeal;

— declare that the action at first instance, in relation to which the order under appeal was made, was admissible in its entirety and without exception;

— uphold in its entirety and without any exception whatsoever the application lodged at first instance by the appellant;

— order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation both to the proceedings at first instance and to the present appeal proceedings;

— in the alternative, refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.

Pleas in law and main arguments

The present appeal has been brought against the order of the Civil Service Tribunal (CST) of 22 June 2010. That order dismissed as manifestly inadmissible an action seeking compensation for the damage sustained by the appellant because of the Commission's refusal to reimburse him in respect of the costs incurred in the proceedings in Case T-18/04 *Marcuccio* v *Commission*.

In support of his claims, the appellant alleges the erroneous and unreasonable interpretation of the concept of 'request' for the purposes of Articles 90 and 91 of the Staff Regulations; total failure to state reasons; distortion and misrepresentation of the facts; and misinterpretation of the case-law on the recovery of costs which a party has been ordered to pay by the Court.

The appellant also alleges breach of the principle of *audi alteram partem* and of the rights of the defence and asserts that the CST failed to rule on a number of his claims.

Action brought on 3 September 2010 — Rubinetteria Cisal v Commission

(Case T-368/10)

(2010/C 288/110)

Language of the case: Italian

Parties

Applicant: Rubinetteria Cisal (Alzo Frazione di Pella, Italy) (represented by M. Pinnarò, lawyer)

Defendant: European Commission

Form of order sought

— Annulment of Decision C(2010) 4185 of 23 June 2010;

— alternatively, if the Court should not annul the fine imposed, reduction of the fine to a more appropriate sum;

— an order that the Commission should pay the costs.

Pleas in law and main arguments

The decision contested in these proceedings is the same as that in Case T-364/10 *Duravit and Others* v *Commission*.

In support of its claims the applicant puts forward the following pleas in law:

I. Infringement and misapplication of Articles 101 TFEU and 53 EEA

In this regard, it is claimed that the decision, in so far as it concerns Cisal, is quite wrong, for Cisal has played no part (even an unwitting part) in any cartel, having merely exchanged non-sensitive business information which was unreserved and (in almost every case) later than the decisions taken independently and already spreading on the market.

II. Breach of the principles of proportionality and equal treatment

According to the applicant, the Commission failed to consider that the role, involvement, responsibility, advantages etc. of and for each producer differed significantly from one to another. Specifically, the defendant has drawn no distinctions and does not explain why the maximum penalty is to be imposed on Cisal, given that the latter: (i) was never a member of one of the two associations (Michelangelo); (ii) never had bilateral contacts; (iii) did not take part in meetings at which all three products were considered (but only taps, cocks and fittings and ceramic ware) and (iv) had always had only an insignificant share of the market.

So far as the fixing of the fine is concerned, the applicant maintains that the Commission ought to have taken into account and determined the actual effect of the infringement on the market and the extent of the relevant geographic market, and to have taken account of Cisal's actual economic ability to distort competition and of its specific weight.

The applicant alleges also that the basis used for computing the amount of the fine was incorrect, and that the Commission failed to have regard to mitigating circumstances.

Action brought on 30 August 2010 — Rubinetterie Teorema v Commission

(Case T-370/10)

(2010/C 288/111)

Language of the case: Italian

Parties

Applicant: Rubinetterie Teorema SpA (Flero, Brescia, Italy) (represented by: R. Cavani, lawyer, M. Di Muro, lawyer, P. Preda, lawyer)

Defendant: European Commission

Form of order sought

— Annul Decision C(2010) 4185 of 23 June 2010;

— In the alternative, impose a token fine;

— In the further alternative, substantially reduce the fine imposed by the decision to such amount as the Court deems appropriate;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The decision contested in these proceedings is the same as that contested in Case T-368/10 *Rubinetteria Cisal* v *Commission*.

The pleas in law and main arguments are similar to those relied on in that case.

In particular, the applicant alleges:

— Infringement of the rights of the defence in relation to Teorema and the consequent invalidity of the decision owing to:

  — the delay in communicating to Teorema the accusations made by the Commission;

  — the difficulties in accessing the file and the lack of an adequate extension of the time-limits;

— The fact that there is no agreement whose purpose or effect is to prevent, restrict or distort competition and/or no adverse effects on Community trade, and

— The incorrect assessment of the evidence relating to the alleged involvement of Teorema in Euroitalia's meetings.

Action brought on 7 September 2010 — Amor v OHIM — Jablonex Group (AMORIKE)

(Case T-371/10)

(2010/C 288/112)

Language in which the application was lodged: German

Parties

Applicant: Amor GmbH (Obertshausen, Germany) (represented by: M. Hartmann, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Jablonex Group a.s. (Jablonec nad Nisou, Czech Republic)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 June 2010 in Case R 619/2009-2;

— Order OHIM to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Jablonex Group a.s.

Community trade mark concerned: Word mark 'AMORIKE' for goods and services in Classes 14, 25 and 26.

Proprietor of the mark or sign cited in the opposition proceedings: Amor GmbH.

Mark or sign cited in opposition: Internationally-registered word mark 'AMOR' for goods in Class 14; Community figurative marks containing the word element 'Amor' for goods in Classes 14 and 18; national figurative marks containing the word element 'Amor' for goods in Class 25, and national figurative marks which are orange in colour and which contain the word element 'Amor' for goods in Classes 9, 14, 18, 35 and 42.

Decision of the Opposition Division: The opposition was rejected.

Decision of the Board of Appeal: The appeal was dismissed.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009, ([1]) in that there is a likelihood of confusion between the marks at issue.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 7 September 2010 — Mamoli Robinetteria v Commission

(Case T-376/10)

(2010/C 288/113)

Language of the case: Italian

Parties

Applicant: Mamoli Robinetteria SpA (Milan, Italy) (represented by: F. Capelli, lawyer, M. Valcada, lawyer)

Defendant: European Commission

Form of order sought

— Annul Article 1 of European Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA Agreement, notified (Case COMP/39092 — Bathroom Fittings and Fixtures), in so far as it finds that Mamoli Robinetteria SpA had infringed Article 10 TFEU and, consequently, annul Article 2 of that decision in so far as it imposes on Mamoli Robinetteria SpA a fine amounting to 10 % of the total turnover for 2009, subsequently reduced to EUR 1 041 531 on account of Mamoli's specific situation;

— Annul Article 2 of European Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement, notified (Case COMP/39092 — Bathroom Fittings and Fixtures), recalculating the fine and reducing it to an amount equal to 0.3 % of Mamoli Robinetteria's turnover for 2003 or, in any event, to such lesser amount, compared with the penalty imposed, as the Court may deem appropriate.

Pleas in law and main arguments

The decision contested in these proceedings is the same as that contested in Case T-364/10 *Duravit and Others* v *Commission* and Case T-368/10 *Rubinetteria Cisal* v *Commission*.

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

Infringement of the rights of the defence, of the principle of *audi alteram partem* and of the principle of equal treatment, in so far as the other parties to the proceedings were able to put forward arguments in their defence in relation to circumstances not disclosed to Mamoli. It is also argued that the statement of objections was also based on documents treated as confidential and not accessible to the parties for consultation.

Breach of the principle of legality and infringement of Articles 101 to 105 TFEU, taken together, and Article 23 of Council Regulation No 1/2003. ([1]) In that connection, the applicant submits that, in the absence of an act of the European legislature, the Commission does not have any power to grant partial or total immunity to undertakings or, on the basis of such a statement of objections, to initiate competition proceedings resulting in the imposition of heavy penalties.

Infringement of Article 101 TFEU and Article 2 of Regulation EC No 1/2003.

In that connection, the applicant submits that the Commission made substantial errors during the investigation, disregarding the specific nature of the Italian market (for example, structure, characteristics, roll of wholesalers) and conflating the situation of the Italian market with that of the German market. That error undermined the Commission's conclusions as to the existence of a price-fixing cartel on the Italian market. In addition, as a result of the errors alleged, the Commission did not discharge the burden of proof incumbent on it.

As regards the amount of the fine, the applicant submits that the Commission did not correctly evaluate the applicant's actual conduct or the impact of that conduct in the context of the contested infringement, since it failed to take due account of the critical economic situation in which the applicant found itself.

The applicant submits that, although the Commission understood that Mamoli was in fact in a critical economic situation undermining the company's ability to pay, it adopted a decision unsuitable for attaining the objective sought.

(1) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Action brought on 8 September 2010 — Wabco Europe and Others v Commission

(Case T-380/10)

(2010/C 288/114)

Language of the case: English

Parties

Applicants: Wabco Europe BVBA (Brussels, Belgium), Wabco Austria GesmbH (Vienna, Austria), Trane Inc. (Piscataway, United States), Ideal Standard Italia s.r.l. (Milan, Italy) and Ideal Standard GmbH (Bonn, Germany), (represented by: S. Völcker, F. Louis, A. Israel and N. Niejahr, lawyers, C. O'Daly and E. Batchelor, Solicitors, and F. Carlin, Barrister)

Defendant: European Commission

Form of order sought

— Partially annul Article 2 and, to the extent necessary, Article 1 (1) N. 3 and 4 of the Commission Decision No C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom Fittings and Fixtures;

— Reduce the amount of the fine imposed on the applicants; and

— Order the Commission to bear the costs.

Pleas in law and main arguments

By means of their application, the applicants seek, pursuant to Article 263 TFUE, the partial annulment of Commission Decision No C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom Fittings and Fixtures, relating to a an agreement between undertakings covering the Belgian, German, French, Italian, Dutch and Austrian markets of bathroom fittings and fixtures, concerning the sale prices and the exchange of sensitive commercial information, as well as, in the alternative, the reduction of the amount of the fine imposed on them.

In support of their application, the applicants put forward the following pleas in law:

Firstly, the applicants allege that the Commission disregarded the applicable legal standards in its attempts to establish the participation of Ideal Standard Italia s.r.l. and of Ideal Standard GmbH in a ceramics-related infringement in Italy.

Secondly, the applicants allege that the Commission failed to reduce the fine imposed on them for the French and Belgian infringements despite granting partial immunity from fines for such infringements under the last paragraph of point 23 of the Commission's 2002 notice on immunity from fines and reduction of fines in cartel cases (1).

Thirdly, the applicants allege that the Commission erred in finding that Grohe Beteiligungs GmbH and Grohe AG and its subsidiaries, rather than Ideal Standard Italia s.r.l. and Ideal Standard GmbH, were the first to provide "significant added value" under the Commission's 2002 notice on immunity from fines and reduction of fines in cartel cases.

Finally, the applicants allege that the Commission's retroactive application of the 2006 Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (2) was unlawful, insofar as it penalised Ideal Standard Italia s.r.l. and Ideal Standard GmbH for the kind of information that it provided as a leniency applicant in the good faith expectation that the Commission would not drastically alter the applicable fining framework to their detriment.

(1) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

(2) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2).

Action brought on 8 September 2010 — Spain v Commission

(Case T-384/10)

(2010/C 288/115)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: J. Rodríguez Cárcamo)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2010) 4147 of 30 June 2010, reducing the assistance granted from the Cohesion Fund to the following (groups of) projects: 'Water supply to settlements in the Guadiana basin: Andévalo area' (2000.ES.16.C.PE.133), 'Drainage and water treatment in the Guadalquivir basin: Guadaira, Aljarafe and the areas of natural protection of the Guadalquivir' (2000.16.C.PE.066) and 'Water supply to multi-municipal systems in the provinces of Granada and Málaga' (2002.ES.16.C.PE.061), and

— order the Commission to pay the costs.

Pleas in law and main arguments

In the context of the Cohesion Fund, the Commission granted assistance to various projects, in relation to 'Water supply to settlements in the Guadiana basin: Andévalo area' (2000.ES.16.C.PE.133) [Decision C(2001) 4113 of 18 December 2001], 'Drainage and water treatment in the Guadalquivir basin: Guadaira, Aljarafe and the areas of natural protection of the Guadalquivir' (2000.16.C.PE.066) [Decision C(2000) 4316 of 29 December 2000], and 'Water supply to multi-municipal systems in the provinces of Granada and Málaga' (2002.ES.16.C.PE.061) [Decision C(2002) 4689 of 24 December 2002].

The different projects were to be carried out by means of various contracts for work.

The contested decision reduces the assistance initially granted by the Cohesion Fund, by means of the corresponding financial corrections.

In support of its claims, the applicant relies on the following pleas in law:

1. Breach of Article H.2 of Regulation No 1994/1164 EC, [1] in so far as:

   — a financial correction is being applied for breaches of EU public procurement directives to contracts which are not, however, subject to those directives;

   — a financial correction is being applied for a breach of EU legislation which has not, however, taken place, since the subject-matter of the contracts has not been unlawfully split up.

2. Alternatively, in relation to the all of the foregoing, breach of the regulation referred to, in so far as Directive 93/37/EEC on public works contracts has not been infringed in relation to experience or average price.

3. In the further alternative, the applicant alleges that the principle of proportionality has been breached in a number of respects.

[1] Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund (OJ 1994 L 130, p. 1).

Order of the General Court of 6 September 2010 — British American Tobacco (Investments) v Commission

(Case T-170/03) [1]

(2010/C 288/116)

Language of the case: English

The President of the Fifth Chamber has ordered that the case be removed from the register.

[1] OJ C 171, 19.7.2003.

Order of the General Court of 1 September 2010 — Universal v Commission

(Case T-34/06) [1]

(2010/C 288/117)

Language of the case: English

The President of the Third Chamber has ordered that the case be removed from the register.

[1] OJ C 60, 11.3.2006.

Order of the General Court of 1 September 2010 — Fabryka Samochodòw Osobowych v Commission

(Case T-88/07) ([1])

(2010/C 288/118)

Language of the case: Polish

The President of the Sixth Chamber has ordered that the case be removed from the register.

([1]) OJ C 117, 29.5.2007.

Order of the General Court of 3 September 2010 — Huta Buczek v Commission

(Joined Cases T-440/07 and T-1/08) ([1])

(2010/C 288/119)

Language of the case: Polish

The President of the Second Chamber has ordered that Case T-440/07 be removed from the register.

([1]) OJ C 22, 26.1.2008.

Order of the General Court of 2 September 2010 — Gruener Janura v OHIM — Centum Aqua Marketing (Hundertwasser)

(Case T-125/09) ([1])

(2010/C 288/120)

Language of the case: German

The President of the Fifth Chamber has ordered that the case be removed from the register.

([1]) OJ C 129, 6.6.2009.

Order of the General Court of 6 September 2010 — Carlyle v OHIM — MRP Consult (CAFE CARLYLE)

(Case T-505/09) ([1])

(2010/C 288/121)

Language of the case: English

The President of the Sixth Chamber has ordered that the case be removed from the register.

([1]) OJ C 51, 27.2.2010.

Order of the General Court of 6 September 2010 — Carlyle v OHIM — MRP Consult (THE CARLYLE)

(Case T-506/09) ([1])

(2010/C 288/122)

Language of the case: English

The President of the Sixth Chamber has ordered that the case be removed from the register.

([1]) OJ C 51, 27.2.2010.

Order of the General Court of 11 August 2010 — Footwear v OHIM — Reno Schuhcentrum (swiss cross FOOTWEAR)

(Case T-49/10) ([1])

(2010/C 288/123)

Language of the case: German

The President of the First Chamber has ordered that the case be removed from the register.

([1]) OJ C 100, 17.4.2010.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 29 June 2010 — Hanschmann v European Police Office (Europol)

(Case F-27/09) [1]

(Staff case — Europol employees — Non-renewal of a contract — Contract of indefinite duration — Article 6 of the Staff Regulations applicable to Europol employees — Principle of respect for the rights of the defence)

(2010/C 288/124)

Language of the case: Dutch

Parties

Applicant: Ingo Hanschmann (The Hague, Netherlands) (represented initially by P. de Casparis, lawyer, then by W. J. Dammingh and N. D. Dane, lawyers)

Defendant: European Police Office (Europol) (represented by- D. Neumann and D. El Khoury, agents, and by B. Wägenbaur and R. Van der Hout, lawyers)

Re:

Annulment of the decision of 12 June 2008 informing the applicant that it was impossible to offer him a permanent post, and the decision of 7 January 2009 rejecting the complaint brought against the first decision.

Operative part of the judgment

The Tribunal:

1. *annuls the decision of 12 June 2008 by which the European Police Office (Europol) refused to offer to Mr Hanschmann a contract of indefinite duration;*

2. *orders Europol to pay the costs.*

[1] OJ C 167, of 18.07.09., p 25

Judgment of the Civil Service Tribunal (First Chamber) of 29 June 2010 — Kipp v European Police Office (Europol),

(Case F-28/09) [1]

(Civil service — Europol staff — Non-renewal of a contract — Contract of indefinite duration — Article 6 of the staff regulations applicable to Europol employees — Principle of the rights of defence)

(2010/C 288/125)

Language of the case: Dutch

Parties

Applicant: Michael Kipp (The Hague, The Netherlands) (represented by: initially by P. de Casparis, lawyer, and subsequently by W. J. Dammingh and N. D. Dane, lawyers)

Defendant: European Police Office (Europol) (represented by: D. Neumann and D. El Khoury, agents, assisted by B. Wägenbaur and R. Van der Hout, lawyers)

Re:

Application for annulment of the decision of 12 June 2008 informing the applicant that it was impossible to offer him a permanent post and of the decision of 7 January 2009 rejecting the complaint brought against the first decision.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of 12 June 2008 in which the European Police Office (Europol) refused to grant Mr Kipp a contract of indefinite duration;*

2. *Orders Europol to bear the costs.*

[1] OJ C 167, 18.07.09, p. 25.

Judgment of the Civil Service Tribunal (First Chamber) of 29 June 2010 — Sluiter v European Police Office (Europol)

(Case F-34/09) [1]

(Staff case — Europol employees — Non-renewal of a contract — Contract of indefinite duration — Article 6 of the Staff Regulations applicable to Europol employees — Principle of respect for the rights of the defence)

(2010/C 288/126)

Language of the case: Dutch

Parties

Applicant: Rudolf Sluiter (Hillegom, Netherlands) (represented initially by P. de Casparis, lawyer, then by W. J. Dammingh and N. D. Dane, lawyers)

Defendant: European Police Office (Europol) (represented by D. Neumann and D. El Khoury, agents, and by B. Wägenbaur and R. Van der Hout, lawyers)

Re:

Annulment of the decision of 12 June 2008 informing the applicant that it was impossible to offer him a permanent post, and the decision of 7 January 2009 rejecting the complaint brought against the first decision.

Operative part of the judgment

The Tribunal:

1. *annuls the decision of 12 June 2008 by which the European Police Office (Europol) refused to offer to Mr Sluiter a contract of indefinite duration;*

2. *orders Europol to pay the costs.*

[1] OJ C 167, of 18.07.09., p 25

Judgment of the Civil Service Tribunal (First Chamber) of 29 June 2010 — Visser-Fornt Raya v European Police Office (Europol)

(Case F-35/09) [1]

(Staff case — Europol employees — Non-renewal of a contract — Contract of indefinite duration — Article 6 of the Staff Regulations applicable to Europol employees — Principle of respect for the rights of the defence)

(2010/C 288/127)

Language of the case: Dutch

Parties

Applicant: Maria Teresa Visser-Fornt Raya (The Hague, Netherlands) (represented initially by P. de Casparis, lawyer, then by W. J. Dammingh and N. D. Dane, lawyers)

Defendant: European Police Office (Europol) (represented by- D. Neumann and D. El Khoury, agents, and by B. Wägenbaur and R. Van der Hout, lawyers)

Re:

Annulment of the decision of 12 June 2008 informing the applicant that it was impossible to offer her a permanent post, and the decision of 7 January 2009 rejecting the complaint brought against the first decision.

Operative part of the judgment

The Tribunal:

1. *annuls the decision of 12 June 2008 by which the European Police Office (Europol) refused to offer to Ms Visser-Fornt Raya a contract of indefinite duration;*

2. *orders Europol to pay the costs.*

[1] OJ C 167, of 18.07.09., p 26

Judgment of the Civil Service Tribunal (First Chamber) of 29 June 2010 — Armitage-Wilson v European Police Office (Europol)

(Case F-36/09) [1]

(Staff case — Europol employees — Non-renewal of a contract — Contract of indefinite duration — Article 6 of the Staff Regulations applicable to Europol employees — Principle of respect for the rights of the defence)

(2010/C 288/128)

Language of the case: Dutch

Parties

Applicant: Kate Armitage-Wilson (The Hague, Netherlands) (represented by W. J. Dammingh, lawyer)

Defendant: European Police Office (Europol) (represented by- D. Neumann and D. El Khoury, agents, and by B. Wägenbaur and R. Van der Hout, lawyers)

Re:

Annulment of the decision of 12 June 2008 informing the applicant that it was impossible to offer her a permanent post, and the decision of 7 January 2009 rejecting the complaint brought against the first decision.

Operative part of the judgment

The Tribunal:

1. *annuls the decision of 12 June 2008 by which the European Police Office (Europol) refused to offer to Ms Armitage-Wilson a contract of indefinite duration;*

2. *orders Europol to pay the costs.*

[1] OJ C 167, of 18.07.09., p 26

Judgment of the Civil Service Tribunal (First Chamber) of 29 June 2010 — Doyle v European Police Office (Europol)

(Case F-37/09) [1]

(Staff case — Europol employees — Non-renewal of a contract — Contract of indefinite duration — Article 6 of the Staff Regulations applicable to Europol employees — Principle of respect for the rights of the defence)

(2010/C 288/129)

Language of the case: Dutch

Parties

Applicant: Margaret Doyle (Noordwijkerhout, Netherlands) (represented initially by P. de Casparis, lawyer, then by W. J. Dammingh and N. D. Dane, lawyers)

Defendant: European Police Office (Europol) (represented by D. Neumann and D. El Khoury, agents, and by B. Wägenbaur and R. Van der Hout, lawyers)

Re:

Annulment of the decision of 12 June 2008 informing the applicant that it was impossible to offer her a permanent post, and the decision of 7 January 2009 rejecting the complaint brought against the first decision.

Operative part of the judgment

The Tribunal:

1. *annuls the decision of 12 June 2008 by which the European Police Office (Europol) refused to offer to Ms Doyle a contract of indefinite duration;*

2. *orders Europol to pay the costs.*

[1] OJ C 167, of 18.07.09., p 26

Judgment of the Civil Service Tribunal (First Chamber) of 29 June 2010 — Martin v European Police Office (Europol)

(Case F-38/09) [1]

(Staff case — Europol employees — Non-renewal of a contract — Contract of indefinite duration — Article 6 of the Staff Regulations applicable to Europol employees — Principle of respect for the rights of the defence)

(2010/C 288/130)

Language of the case: Dutch

Parties

Applicant: Breige Martin (Dublin, Ireland) (represented initially by P. de Casparis, lawyer, then by W. J. Dammingh and N. D. Dane, lawyers)

Defendant: European Police Office (Europol) (represented by D. Neumann and D. El Khoury, agents, and by B. Wägenbaur and R. Van der Hout, lawyers)

Re:

Annulment of the decision of 12 June 2008 informing the applicant that it was impossible to offer her a permanent post, and the decision of 7 January 2009 rejecting the complaint brought against the first decision.

Operative part of the judgment

The Tribunal:

1. *annuls the decision of 12 June 2008 by which the European Police Office (Europol) refused to offer to Ms Martin a contract of indefinite duration;*

2. *orders Europol to pay the costs.*

[1] OJ C 167, of 18.07.09., p 26

Judgment of the Civil Service Tribunal (First Chamber) of 29 June 2010 — Goddijn v European Police Office (Europol)

(Case F-39/09) [1]

(Public service — Europol staff — Non-renewal of a contract — Contract for an indefinite period — Article 6 of Europol Staff Regulations — Principle of respect for the rights of the defence)

(2010/C 288/131)

Language of the case: Dutch

Parties

Applicant: Jacqueline Goddijn (Breda, Netherlands) (represented initially by P. de Casparis, lawyer and subsequently by W.J. Dammingh and N.D. Dane, lawyers)

Defendant: European Police Office (Europol) (represented by: D. Neumann and D. El Khoury, Agents and B. Wägenbaur and R. Van der Hout, lawyers)

Re:

Annulment of the decision of 12 June 2008 informing the applicant that it was impossible to offer her a permanent post and the decision of 7 January 2009 dismissing the complaint against the first decision.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of 12 June 2008 by which the European Police Office (Europol) refused to award a contract for an indefinite period to Ms Goddijn;*

2. *Orders Europol to pay the costs.*

[1] OJ C 167, 18.7.09, p. 27.

Judgment of the Civil Service Tribunal (First Chamber) of 29 June 2010 — Roumimper v European Police Office (Europol)

(Case F-41/09) [1]

(Public service — Europol staff — Non-renewal of a contract — Contract for an indefinite period — Article 6 Europol Staff Regulation — Principle of respect for the rights of the defence)

(2010/C 288/132)

Language of the case: Dutch

Parties

Applicant: Jacques Pierre Roumimper (Zoetermeer, Netherlands) (represented initially by P. de Casparis, lawyer, and subsequently by W.J. Dammingh and N.D. Dane, lawyers)

Defendant: European Police Office (Europol) (represented by: D. Neumann and D. El Khoury Agents, and B. Wägenbaur and R. Van der Hout, lawyers)

Re:

Annulment of the decision of 12 June 2008 informing the applicant that it was impossible to offer him a permanent post and the decision of 7 January 2009 dismissing the complaint against the first decision.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of 12 June 2008 by which the European Police Office (Europol) refused to award a contract for an indefinite period to Mr Roumimper;*

2. *Orders Europol to pay the costs.*

[1] OJ C 180, 1.8.09, p. 63.

Judgment of the Civil Service Tribunal (First Chamber) of 29 June 2010 — Esneau-Kappé v European Police Office (Europol)

(Case F-42/09) [1]

(Staff case — Europol employees — Non-renewal of a contract — Contract of indefinite duration — Article 6 of the Staff Regulations applicable to Europol employees — Principle of respect for the rights of the defence)

(2010/C 288/133)

Language of the case: Dutch

Parties

Applicant: Anne Esneau-Kappé (The Hague, Netherlands) (represented initially by P. de Casparis, lawyer, then by W. J. Dammingh and N. D. Dane, lawyers)

Defendant: European Police Office (Europol) (represented by D. Neumann and D. El Khoury, agents, and by B. Wägenbaur and R. Van der Hout, lawyers)

Re:

Annulment of the decision of 12 June 2008 informing the applicant that it was impossible to offer her a permanent post, and the decision of 7 January 2009 rejecting the complaint brought against the first decision.

Operative part of the judgment

The Tribunal:

1. *annuls the decision of 12 June 2008 by which the European Police Office (Europol) refused to offer to Ms Esneau-Kappé a contract of indefinite duration;*

2. *orders Europol to pay the costs.*

[1] OJ C 180, of 01.08.09., p 63

Judgment of the Civil Service Tribunal (First Chamber) of 29 June 2010 — Knöll v European Police Office (Europol)

(Case F-44/09) [1]

(Staff case — Europol employees — Non-renewal of a contract — Contract of indefinite duration — Article 6 of the Staff Regulations applicable to Europol employees — Principle of respect for the rights of the defence)

(2010/C 288/134)

Language of the case: Dutch

Parties

Applicant: Brigitte Knöll (Hochheim am Main, Germany) (represented initially by P. de Casparis, lawyer, then by W. J. Dammingh and N. D. Dane, lawyers)

Defendant: European Police Office (Europol) (represented by D. Neumann and D. El Khoury, agents, and by B. Wägenbaur and R. Van der Hout, lawyers)

Re:

Annulment of the decision of 12 June 2008 informing the applicant that it was impossible to offer her a permanent post, and the decision of 7 January 2009 rejecting the complaint brought against the first decision.

Operative part of the judgment

The Tribunal:

1. *annuls the decision of 12 June 2008 by which the European Police Office (Europol) refused to offer to Ms Knöll a contract of indefinite duration;*

2. *orders Europol to pay the costs.*

[1] OJ C 180, of 01.08.09., p 64

Order of the Civil Service Tribunal (First Chamber) of 9 July 2010 — Marcuccio v Commission

(Case F-91/09) [1]

(Public service — Officials — Reasonable time-limits for bringing a claim for damages — Out of time)

(2010/C 288/135)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Defendant: European Commission (represented by: J. Currall and C. Berardis-Kayser, Agents, and A. Dal Ferro, lawyer)

Re:

Rejection by the Commission of the applicant's request for compensation for damage purportedly suffered as a result of a letter by which the Commission asked a doctor to carry out a medical examination in order to determine whether the applicant was genuinely unfit for work.

Operative part of the order

1. *The action is dismissed as being in part manifestly inadmissible and in part manifestly unfounded.*

2. *Mr Marcuccio is to pay the costs in their entirety.*

[1] OJ C 11 of 16.1.2010, p. 41.

Order of the Civil Service Tribunal (First Chamber) of 13 July 2010 — Allen and Others v Commission

(Case F-103/09) [1]

(Civil service — Staff employed at the JET project — Actions for damages — Reasonable period — Out of time)

(2010/C 288/136)

Language of the case: English

Parties

Applicants: John Allen (Horspath, UK) and others (represented by: P. Lasok QC, I. Hutton and B. Lask, barristers)

Defendant: European Commission (represented by: J. Currall and D. Martin, Agents)

Re:

Application for damages for the harm caused to the applicants by the defendant's failure to recruit them as temporary agents while they were employed in the joint undertaking JET.

Operative part of the order

1. *The application is dismissed as inadmissible;*

2. *Mr Allen and the 110 other applicants whose names have been retained on the list of applicants are directed to pay all the costs.*

([1]) OJ C 37, 13.2.2010, p. 51.

Order of the Civil Service Tribunal (First Chamber Chamber) of 29 June 2010 — Palou Martínez v Commission

(Case F-11/10)

(Public service — Officials — Manifestly inadmissible — Delay — Failure to follow the pre-litigation procedure — Article 35(1)(e) of the Rules of Procedure)

(2010/C 288/137)

Language of the case: French

Parties

Applicant: María Soledad Palou Martínez (Barcelona, Spain) (represented by: V. Balfagon Costa, lawyer)

Defendant: European Commission

Re:

Application to annul the decision to reassign the applicant to headquarters in Brussels.

Operative part of the order

1. *The application is dismissed as manifestly inadmissible.*

2. *Ms Palou Martínez is ordered to bear her own costs.*

Action brought on 6 August 2010 — Mata Blanco v Commission

(Case F-65/10)

(2010/C 288/138)

Language of the case: French

Parties

Applicant: José Manuel Mata Blanco (Brussels, Belgium) (represented by: L. Levi and A. Blot, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the EPSO decision not to include the applicant on the reserve list for internal competition 'COM/INT/OLAF.09/AD10 — Administrators specialised in anti-fraud' and the reserve list and all the decisions taken on the basis of that list

Form of order sought

— annul the EPSO decision of 11 May 2010 confirming, after re-examination, its decision of 9 March 2010 not to include the applicant on the reserve list for internal competition 'COM/INT/OLAF/09/AD10 — Administrators specialised in anti-fraud';

— annul the reserve list for internal competition 'COM/INT/OLAF/09/AD10 — Administrators specialised in anti-fraud' in so far as it does not include the applicant's name and all other decision taken on the basis of that list;

— order, as measures of organisation of procedure (cf. Article 55 of the Rules of Procedure of the General Court), the production by the defendant of the criteria used by the jury for the oral test, the questions put to him by the competition jury during his oral test and the copy of the jury's assessment sheet relating to that oral test together with the criteria used in their marking.

Action brought on 17 August 2010 — De Britto Patricio-Dias v Commission

(Case F-66/10)

(2010/C 288/139)

Language of the case: French

Parties

Applicant: Jorge De Britto Patricio-Dias (Brussels, Belgium) (represented by: L. Massaux, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the applicant's career development report for the period from 1 January to 31 December 2008 in so far as it placed him in performance level III and awarded him two promotion points.

Form of order sought

— annul the appointing authority decision No R-98/10 of 12 May 2010, and in so far as necessary, the career development report for the period from 1 January to 31 December 2008;

— order the defendant to pay the sum estimated ex aequo et bono at EUR 25 000;

— order the European Commission to pay the costs.

Action brought on 18 August 2010 — Marcuccio v Commission

(Case F-67/10)

(2010/C 288/140)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision not to reimburse two-thirds of the costs incurred by the applicant in Case F-41/06.

Form of order sought

The applicant claims that the Civil Service Tribunal should:

— annul the decision, whatever its form, which brought about the rejection by the Commission of the request of 22 September 2009 sent by the applicant to the appointing authority and amended by the note of 8 October 2009;

— annul, in so far as is necessary, the decision — whatever its form — by which the complaint of 5 April 2010 against the contested decision, sent by the applicant to the appointing authority, was rejected;

— annul, in so far as is necessary, the note of 27 April 2010 (HR.D.2/MB/1s Ares (2010) 220139);

— order the Commission to pay to the applicant the sum of EUR 21 608,75, together with interest calculated at the rate of 10 % per annum, with annual capitalisation, and running from the date of the request of 22 September 2009 until actual payment of the sum immediately due by way of reparation for the damage which has been, or is being, suffered by the applicant on account of the contested decision;

— order the Commission to pay the costs.

Action brought on 20 August 2010 — Behnke v Commission

(Case F-68/10)

(2010/C 288/141)

Language of the case: French

Parties

Applicant: Thorsten Behnke (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis, E. Marchal, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision to place the applicant in Performance Group II and to award him 5 promotion points for his career development report for the period from 1 January to 31 December 2008.

Form of order sought

— Annul the decision to place the applicant in Performance Group II and to award him 5 promotion points for his career development report for the period from 1 January to 31 December 2008;

— In the alternative, declare Article 8(4) of the general implementing provisions relating to Article 43 of the Staff Regulations unlawful, in so far as it allows the Joint Committee on Evaluation and Promotions to adopt an opinion by consensus;

— Order the European Commission to pay the costs.

Action brought on 24 August 2010 — Marcuccio v Commission

(Case F-69/10)

(2010/C 288/142)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision rejecting the applicant's request for compensation for the damage suffered as a result of the fact that the defendant had sent a letter to a lawyer who was not yet the applicant's representative.

Form of order sought

The applicant claims that the Civil Service Tribunal (CST) should:

— annul the decision, whatever its form, which brought about the rejection by the European Commission of the request of 30 October 2009 sent by the applicant to the appointing authority;

— annul the note of 11 November 2009 (ADMIN.B.2/MB/1sD(09)29814);

— in so far as is necessary, annul the Commission's rejection of the applicant's complaint to the appointing authority, dated 25 January 2010, against the decision rejecting the request of 30 October 2009; annul that decision; and uphold the request of 30 October 2009;

— in so far as is necessary, annul Note HR.D.2/MB/1s Ares (2010) 251054, dated 10 May 2010, written in French and received by the applicant on 17 May 2010 enclosed with the attached translation of the note in Italian;

— order the Commission to make reparation for the damage unjustly suffered by the applicant as a result of the fact that the note of 10 August 2009 (ADMIN.B.2/MB/ksD(09)20658) was sent by the Commission to Giuseppe Cipressa, avvocato, by paying to the applicant the sum of EUR 10 000, or such other sum — whether greater or smaller — as the CST may consider just and equitable;

— order the Commission to pay to the applicant, with effect from the date following that on which the request of 30 October 2009 was received by the Commission until actual payment of the sum of EUR 10 000, interest on that sum at the rate of 10 % per annum, with annual capitalisation;

— order the Commission to pay the costs.

Action brought on 27 August 2010 — Hidalgo v European Parliament

(Case F-70/10)

(2010/C 288/143)

Language of the case: French

Parties

Applicant: José Manuel Hidalgo (Brussels, Belgium) (represented by: A. Coolen, J.N. Louis and E. Marchal, lawyers)

Defendant: European Parliament

Subject-matter and description of the proceedings

Application for the annulment of the applicant's salary adjustment slip for the period from July to December 2009 and the salary slips issued since 1 January 2010 within the framework of the annual adjustment of the remuneration and pensions of officials and other servants of the European Communities pursuant to Council Regulation (EC, Euratom) No 1296/2009 of 23 December 2009 and a claim for compensation.

Forms of order sought

— Declare that Council Regulation (EC, Euratom) No 1296/2009 of 23 December 2009 is not applicable;

— Annul the decision of the Secretary General of the European Parliament of 4 June 2010 rejecting the applicant's complaint regarding his salary adjustment slip for the period from July to December 2009 and his salary slips issued since 1 January 2010 pursuant to Council Regulation (EC, Euratom) No 1296/2009 of 23 December 2009;

— Annul, where necessary, the decisions of the European Parliament on the establishment of his salary adjustment slip for the period from July to December 2009 and his salary slips issued since 1 January 2010 pursuant to Council Regulation (EC, Euratom) No 1296/2009 of 23 December 2009;

— Order the Parliament to pay the applicant the arrears of remuneration to which he is entitled, plus default interest calculated, from the date those arrears were due, at the rate laid down by the ECB for its main refinancing operations, increased by two percentage points;

— Order the Parliament to pay the applicant a symbolic sum of EUR 1 to compensate for breaches of administrative duty and to pay the costs.

Order of the Civil Service Tribunal of 30 June 2010 — Hanot v Commission

(Case F-30/06) ([1])

(2010/C 288/144)

Language of the case: French

The President of the First Chamber has ordered that the case be removed from the register.

([1]) OJ C 131, 3.6.2006, p. 50.

Order of the Civil Service Tribunal of 26 July 2010 — Vereecken v Commission

(Case F-86/06) ([1])

(2010/C 288/145)

Language of the case: French

The President of the First Chamber has ordered that the case be removed from the register.

([1]) OJ C 237, 30.9.2006, p. 19.

Order of the Civil Service Tribunal of 9 July 2010 — Potoms and Scillia v Parliament

(Case F-26/07) ([1])

(2010/C 288/146)

Language of the case: French

The President of the First Chamber has ordered that the case be removed from the register.

([1]) OJ C 117, 26.5.2007, p. 37.

Order of the Civil Service Tribunal of 26 July 2010 — Quadu v Parliament

(Case F-29/07) ([1])

(2010/C 288/147)

Language of the case: French

The President of the First Chamber has ordered that the case be removed from the register.

([1]) OJ C 117, 26.5.2007, p. 37.

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