

*Pleas in law and main arguments*

Applicant for Community trade mark: Marine Enterprise Projects Società Unipersonale di Alberto Fiorenzi S.r.l.

Community trade mark sought: The figurative mark 'BAIN-BRIDGE' — Application for registration No 940007 requested for products in Classes 18 (Leather and imitations of leather, animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery) and 25 (Clothing, footwear, headgear).

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

Mark or sign cited in opposition: Italian figurative marks 'BRIDGE' (Reg. No 370836 and 704338) for products in Class 25, the figurative mark 'THE BRIDGE BASKET' (Reg. No 593651) for products in Classes 18 and 25, trade name 'THE BRIDGE' (Reg. No 642952) for products in Class 25, the three-dimensional marks 'THE BRIDGE' (Reg. No 704372 and No 633349) for products in Classes 18 and 25, the trade name 'FOOT-BRIDGE' (Reg. No 710102) for products in Classes 18 and 25, the figurative mark 'THE BRIDGE WAYFARER' (Reg. No 721569) for products in Classes 18 and 25, the trade name 'OVER THE BRIDGE' (Reg. No 630763) for products in Classes 18 and 25, and the trade name 'THE BRIDGE' (Reg. No 642953) for products in Class 18.

Decision of the Opposition Division: Dismissal of the opposition.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Misapplication of Article 8(1)(b) of Regulation (EC) No 40/94 (Risk of confusion).

**Action brought on 3 June 2003 by European Federation for Cosmetic Ingredients (EffCI) against the European Parliament and the Council of the European Union**

(Case T-196/03)

(2003/C 184/107)

(Language of the case: English)

An action against the European Parliament and the Council of the European Union was brought before the Court of First Instance of the European Communities on 3 June 2003 by European Federation for Cosmetic Ingredients (EffCI), Brussels, Belgium, represented by Mr K. Maldegem and Mr C. Mereu, lawyers.

The applicant claims that the Court should:

- Declare the application applicable and well founded, or, in the alternative, join the questions on admissibility to the examination of the substance
- Order the partial annulment of Article 1 of Directive 2003/15/EC<sup>(1)</sup> of the European Parliament and the Council of 27 February 2003 amending Council Directive 76/768/EEC<sup>(2)</sup> on the approximation of the laws of the Member States relating to cosmetic products, so as to remove the new Article 4a (2) and (2.1); Article 4b and the new sub-paragraph added to Article 6(3) of the Directive 76/768/EEC.
- order the defendant to pay all costs and expenses in the proceedings

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The applicant is a European Economic Interest Grouping representing European manufacturers of cosmetic ingredients. The provisions of Directive 2003/15/EC which it attacks concern the prohibition of the performance of animal testing on chemicals used as ingredients in cosmetic products as well as the prohibition of all uses in cosmetic products of certain chemicals classified as carcinogenic, mutagenic or toxic for reproduction.

In support of its application to annul the provisions relating to the prohibition of animal testing, the applicant advances the following grounds:

- The alleged infringement of essential procedural requirements. The applicant claims that the contested measure is based on an incorrect legal basis. According to the applicant, although it is based on Article 95 of the EC treaty it is not intended to eliminate obstacles to the free movement of goods or remove distortions of competition. Further, the applicant advances an alleged misuse of powers, in that the contested measure is, according to the applicant, intended to promote the welfare of animals which is not part of the internal market objectives of the EC. Finally, the applicant claims that the contested measure does not contain adequate reasons and due motivation.

- An alleged infringement of the EC Treaty and of secondary Community legislation in that the contested measure actually infringes Article 95(3) and Directive 76/768/EEC which require Community harmonisation measures to be based on a 'high level of protection' of health, safety, environment and consumers.
- The applicant also advances a manifest error of assessment in that the contested measure allegedly fails to take account of scientific assessments made by the Community advisory bodies.

In support of its application to annul the provisions relating to the prohibition of carcinogenic and similar substances, the applicant advances the following grounds:

- An alleged manifest error of assessment and inconsistency with Directive 76/768/EEC. According to the applicant the contested measure is inconsistent with the risk-based approach in the latter Directive.
- An alleged infringement of an essential procedural requirement, in that the prohibition should have been made subject to the prior consultation and positive opinion of the Scientific Committee on Cosmetic Products and Non Food Products intended for Consumers, in accordance with Article 8(2) of Directive 76/768/EEC.
- An alleged infringement Article 95(3) of the EC Treaty and the rules adopted for its application,

Further, the applicant alleges that both contested provisions infringe superior principles of Community law, namely the principles of proportionality, legal certainty and legitimate expectations, the precautionary principle, the principle of consistency, the principle of equal treatment and the need to consider the balance of interests.

<sup>(1)</sup> OJ L 66, 11.3.2003, p. 26-35.

<sup>(2)</sup> OJ L 262, 27.9.1976, p. 169-200.

**Action brought on 30 May 2003 by Proras S.r.l. Engineering and Contracting against Commission of the European Communities**

(Case T-197/03)

(2003/C 184/108)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the

European Communities on 30 May 2003 by Proras S.r.l. Engineering and Contracting, represented by Gian Michele Roberti, Alessandro Maria Lerro, Marco Simone Mariani, Paolo Ziotti and Isabella Perego, lawyers.

The applicant claims that the Court should:

- annul the decision of the European Commission contained in the letter of 19 March 2003 from Mr P.B. Knudsen, Director of Directorate A — Office of Cooperation, EuropeAid, D(2003) D/8511, 'Proras exclusion from participation in a TACIS procurement procedure';
- find the Commission liable in damages for having adopted the abovementioned decision;
- order the defendant to make good the injury suffered by the applicant as a result of that damage, quantified at EUR 1 177 638,24 and further order the publication of any judgment to that effect;
- order the Commission to pay the costs.

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By the present action, Proras S.r.l. Engineering and Contracting (hereinafter 'Proras' or 'the applicant') is challenging the decision of the Commission contained in the letter of 19 March 2003 from Mr P.B. Knudsen, Director of Directorate A — Office of Cooperation, EuropeAid, D(2003) D/8511, 'Proras exclusion from participation in a TACIS procurement procedure' by which it imposes, on the basis of Article 93(c) and (f) in conjunction with Article 96 of Regulation No 1605/2002, <sup>(1)</sup> a sanction consisting in exclusion for two years from tender procedures organised in the context of external actions funded by the Commission in the framework of the TACIS programme and, pursuant to Articles 235 and 288 EC, compensation for the damage suffered as a result of that decision. That decision was adopted after a procedure which contained a number of irregularities, denied by the applicant, which, according to the defendant, were committed in the course of tender procedure SCR — E/110983/D/S/NI, published by the unit 'Programma de apoyo al Sector Educativo en Nicaragua' and financed under the 'ALA' programme.

In support of its action for annulment, Proras puts forward four pleas in law. First, the applicant claims that the EuropeAid department, by adopting as a legal basis for the contested decision a provision — such as Regulation No 1605/2002 — which had not entered into force at the material time, has infringed the principles of retroactivity, lawfulness of sanctions and legitimate expectations. So far as concerns procedure, the applicant criticises the aforementioned department for failing to inform it of the steps it intended to take in terms of the sanctions it proposed to impose on it or, at the very least,