

In support of its application for annulment of that decision the applicant claims first of all that the Commission violated the principle of non-discrimination and of free competition. The applicant considers that the Commission's decision to impose a two month familiarisation period unfavourably discriminated in favour of the incumbent, for whom the familiarisation period was obviously not necessary. In the same context the applicant also contends that delivery of information to the tenderers regarding the software application subject to the call for tenders was insufficient whilst of course the incumbent had unlimited access to such information.

The applicant further submits that the Commission violated the Financial Regulation ⁽²⁾ as well as Directive 92/50 ⁽³⁾ by using evaluation criteria that were not included in the call for tenders, namely the size of the applicant's proposed team, which was considered excessive by the Commission, and the average number of years of experience of the applicant's team, which the Commission considered was lower than that of the team proposed by the successful tenderer.

The applicant further considers that the Commission committed manifest errors of appreciation in its evaluation of the applicant's tender and in particular in its assessments of the expertise of its proposed team and of the applicant's financial offer where, according to the applicant, the Commission mistakenly assumed that all sixteen persons proposed by the applicant would be working in parallel for the whole of the project.

The applicant also invokes a violation, by the Commission, of its obligation, under Article 253 EC, to state reasons and a failure to provide pertinent information requested by the applicant on the grounds for the rejection of its bid. The applicant also submits that the Commission violated the principle of good administration and diligence by acting with significant delay and by not offering adequate answers to the applicant's requests for information prior to the submission of the bids.

⁽¹⁾ OJ 2004/S 73 – 061407

⁽²⁾ 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 L 248, 16/09/2002, p.1

⁽³⁾ Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, OJ L 209, 24/07/1992, p. 1

Action brought on 19 November 2004 by Kenzo Takada against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-468/04)

(2005/C 57/46)

(Language in which the application was lodged: French)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 19 November 2004 by Kenzo Takada, established in Paris, represented by Fernand de Visscher, Eric de Gryse and Donatienne Moreau, lawyers.

Kenzo SA was also a party to the proceedings before the First Board of Appeal.

The applicant claims that the Court should:

- annul the decision delivered on 14 September 2004 by the First Board of Appeal in case R 643/2003-1;
- order OHIM to pay the costs.

Pleas in law and main arguments:

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| Applicant for Community trade mark: | Kenzo Takada |
| Community trade mark concerned: | The word mark 'KENZO TAKADA' for goods and services in Classes 3, 25 and 42 (Bleaching preparations and other substances for laundry use; clothing; services for providing food and drink and temporary accommodation, ...) – Application No 2008084 |
| Proprietor of mark or sign cited in the opposition proceedings: | Kenzo SA |
| Mark or sign cited in opposition: | Community, national and international word and figurative marks 'KENZO' for the goods and services in Classes 3, 9, 25 and 42 (Bleaching preparations and other substances for laundry use; clothing; services providing temporary accommodation, food and drink, ...) |
| Decision of the Opposition Division: | Application for Community trade mark rejected. |
| Decision of the Board of Appeal: | Appeal dismissed |
| Pleas in law: | Infringement of Article 8(1)(b) of Council Regulation No 40/94 |