— Annul the decision of the First Board of Appeal dated 8 December 2004 in case R 309/2004-1;

— Order that the Office and other parties shall bear their own costs and pay those of the applicant.

Pleas in law and main arguments

Applicant for Community trade mark:	Criminal Clothing Limited
Community trade mark concerned:	Word mark CRIMINAL for goods in classes 3, 9 and 25 (articles of clothing etc.) — application No 1676 220
Proprietor of mark or sign cited in the opposition proceedings:	The applicant
Trade mark or sign cited in opposition:	National mark CRIMINAL DAMAGE for goods in class 25 (articles of clothing etc.)
Decision of the Opposition Division:	Opposition rejected
Decision of the Board of Appeal:	Appeal dismissed
Pleas in law:	Misapplication of Article 8(1)(b) of Regulation (EC) No 40/94 [1]

[1] Council Regulation (EC) No 40/94 of 20.12.1993 on the Community trade mark (OJ L 11, p. 1).

Action brought on 16 February 2005 by Aker Warnow Werft GmbH and Kværner ASA against the Commission of the European Communities

(Case T-68/05)

(2005/C 106/69)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 16 February 2005 by Aker Warnow Werft GmbH, established in Rostock-Warnemünde (Germany) and Kværner ASA, established in Oslo (Norway), represented by B. Immenkamp, Solicitor and M. Schütte, lawyer.

The applicants claim that the Court should:

— annul the Decision of the Commission C 6/2000 of 20 October 2004, in its entirety;

— order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

In October 1992, the German privatisation agency (Treuhandanstalt) privatised and sold the East German shipyard Warnow Werft to the Norwegian Kværner group. In the framework of the privatisation, a lump sum contribution to the restructuring of the shipyard, made available in different installments, was offered. The state aid was notified to and approved by the European Commission in separate approval decisions.

In the contested decision, the Commission concluded that the applicants received more aid than was required to cover the actual contract losses incurred by the shipyard, and that the excess of aid should be recovered.

In support of their application, the applicants submit that the Commission committed an error of law and a manifest error of appreciation. According to the applicants, the amount to be recovered as state aid incompatible with the EC Treaty was approved by the Commission in its approval decisions and constitutes existing aid. The applicants submit that the Commission had no right to initiate the formal procedure, to re-assess the compatibility of the aid and to order the recovery of parts of the aid. They submit also that all conditions in the approval decisions of the Commission have been complied with, in particular the obligation to provide Spill-Over Reports and to observe capacity limitations. The applicants claim that the approval decisions did not contain any reservation by the Commission concerning the amount of aid and that all operating aid was approved in a lump sum, following a thorough verification of the necessity of the aid ex ante. Finally, the applicants state that the approval decisions are still in force.

The applicants furthermore submit that the Commission committed a manifest error of appraisal in concluding that the amount of state aid received exceeded the level of contract losses incurred. According to the applicants, the amount of the aid indicated in the contested decision is not mentioned at all in the Commission's approval decisions. Also, the amounts approved by the Commission for contract losses would be lower than the actual contract losses incurred. The applicants claim as well that the Commission included in its assessment of the aid received assets that should be considered not as aid, including assets for which Kværner had paid a purchase price. Furthermore, the applicants claim that the Commission ignored that the amount of aid approved, was only partially received.

The applicants also submit a violation of the principle of legal certainty. According to the applicants, the Commission did not act in a timely manner while it had all relevant information at its disposal. The applicants submit that the Commission only started its inquiries in 1999, even though it was, according to the applicants, fully informed of all relevant facts in early 1996. The procedure opened in February 2000 would also have been extended to new elements that were never investigated before, and for which the approval decisions did not provide a legal basis.

Finally, as a subsidiary ground, the applicants submit that the Commission failed to take all restructuring costs into account when determining the amount to be recovered. According to the applicants, much more was spent on the restructuring than the amount of aid received for that purpose.

Action brought on 11 February 2005 by European Dynamics S.A. against the European Food Safety Authority

(Case T-69/05)

(2005/C 106/70)

(Language of the case: English)

An action against the European Food Safety Authority was brought before the Court of First Instance of the European Communities on 11 February 2005 by European Dynamics S.A., established in Athens (Greece), represented by N. Korogiannakis, lawyer.

The applicant claims that the Court should:

— annul the decision of EFSA, to evaluate the applicant's bid as not successful and award the contract to the successful contractor as well as all other later decisions of EFSA related to the above;

— order the EFSA to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

The applicant company filed a bid in response to EFSA's call for tenders EFSA/IT/00012 ([1]) for the software and services for establishing an Extranet between the Members States' national agencies, EFSA and the European Commission. By the contested decision the applicant's bid was rejected and the contract awarded to another bidder.

In support of its application to annul the contested decisions the applicant contends that the defendant violated the Financial Regulation ([2]) as well as Article 17(1) of Directive 92/50 ([3]) by using evaluation criteria, that were not well specified in the call for tenders. According to the applicant, by accepting without any further processing and cross-checking the opinion of officers of the tenderer's clients, EFSA attributed part of its evaluation rights to third parties. The applicant further argues that under Directive 92/50 the satisfaction of a bidder's clients cannot be taken into account in order to exclude the bidder but can only be used as an 'award criterion'.

The applicant also claims that the defendant committed manifest errors of appreciation in the evaluation of the bid it had submitted. The applicant contests certain statements contained in the report of the Evaluation Committee, regarding the fact that one of the applicant's clients had neither purchased nor used the product offered by the applicant and the fact that another Community institution was not satisfied with the applicant's product. The applicant also considers, in the same context, that the method used by EFSA during the evaluation procedure, consisting in simple telephone calls without any official requests nor cross-checks of the information received, was inadequate and in itself suffices in order to establish a manifest error of assessment.

The applicant finally submits that the defendant failed to provide adequate reasons for its decision, in violation of Article 253 EC.

([1]) OJ 2004/S 153-132262.

([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.