

**Form of order sought**

- Annul the decision of the Grand Board of Appeal of the Office of Harmonisation in the Internal Market (Trade Marks and Designs) of 10 July 2006 in case No R 856/2004-G; and
- order that the costs of the proceedings be borne by the defendant.

**Pleas in law and main arguments**

*Registered Community trade mark subject of the application for a declaration of invalidity:* The figurative mark 'LEGO brick' for products in class 28 claiming the 'colour red' — Community Trade mark No 107 029

*Proprietor of the Community trade mark:* The applicant

*Party requesting the declaration of invalidity of the Community trade mark:* Mega Brands Inc.

*Decision of the Cancellation Division:* Declaration of invalidity of the Community trade mark

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

*Pleas in law:* The applicant advances a single plea in law in support of its application. Precisely, the applicant contends that the contested decision violates Article 7(1)(e)(ii) CTMR of Council Regulation (EC) No 40/94 in so far as it allegedly misinterprets the said provision as well as its rationale and, in addition, to the extent that it applies it to something that is not the subject of the trade mark protection granted by the registration at issue.

**Action brought on 2 October 2006 — Microsoft v Commission**

(Case T-271/06)

(2006/C 294/115)

*Language of the case:* English

**Parties**

*Applicant:* Microsoft Inc (Seattle, USA) (represented by: J-F. Bellis, G. Berrisch, lawyers, I. S. Forrester, QC and D. W. Hull, Solicitor)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Annulment of Commission Decision C(2006)3143 final of 12 July 2006 fixing the definitive amount of the periodic

penalty payment imposed on Microsoft Corporation by Decision C(2005)4420 final and amending that decision as regards the amount;

- in the alternative, annulment or reduction of the periodic penalty payment imposed; and
- order the defendant to pay the costs of the proceedings.

**Pleas in law and main arguments**

By a decision of 10 November 2005 (the 'Article 24(1) decision') adopted pursuant to article 24(1) of Regulation 1/2003, the Commission imposed a periodic penalty payment in the event the applicant failed to fulfil its obligation to provide Interoperability Information pursuant to Decision C(2004)900 final of 24 March 2004 (the '2004 decision'). The contested Decision C(2006)3143 of 12 July 2006 fixed the definitive amount of the periodic penalty payment for the period of 16 December 2005 through 20 June 2006 at 280.5 million EUR.

By means of its application, the applicant seeks annulment of the contested decision on the basis of the following grounds:

Firstly, the applicant claims that the Commission violated its duty to give clear information and precise instructions as to what it required for compliance with the 2004 decision. The applicant deemed such information and instructions to be necessary allowing it to opt for the expected means to satisfy the obligation to provide Interoperability Information. In this respect, the applicant further claims that the Commission omitted to include the relevant instructions in the 2004 decision as well as in the Article 24(1) decision itself, whether prior to adoption of the latter, nor until several months had elapsed after such decision was taken.

Secondly, the applicant submits that the Commission failed to prove to the requisite standard that the applicant did not comply with its obligation to provide Interoperability Information as required under the 2004 decision. Precisely, the Commission allegedly failed to put forward clear and convincing reasoning supported by sufficiently precise and coherent evidence that (1) the technical documentation that the applicant made available on 15 December 2005 did not comply with the requirements of the 2004 decision; and (2) none of the subsequent steps that the applicant undertook from 16 December 2005 to June 2006 were sufficient to ensure compliance. Specifically and according to the applicant, the Commission thus failed to objectively evaluate the evidence before it and applied the wrong standard in evaluating the technical documentation.

The applicant advances as a third ground of annulment the fact that the Commission denied it the right to be heard before adopting the contested decision, the reference period for the imposition of the periodic penalty payment being 16 December 2005 through 20 June 2006 while the Statement of Objections was issued on 21 December 2005, not covering a single day of the reference period.

Fourthly, the applicant contends that the Commission violated its rights of defence by denying it full access to the file, including communications between the Commission, on the one hand, and its experts, on the other.

Finally, the applicant suggests that the amount of the periodic penalty payment is excessive and disproportionate as the Commission failed to take into account the complexity of the compliance obligation, while it completely disregarded the applicant's substantial good faith efforts to comply with the Commission's previous decisions.

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**Action brought on 29 September 2006 — Evropaïki Dynamiki v Court of Justice**

(Case T-272/06)

(2006/C 294/116)

*Language of the case: English*

**Parties**

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

*Defendant:* Court of Justice of the European Communities

**Form of order sought**

- Annulment of the decision of the Court of Justice to evaluate the applicant's bid as not successful and award the contract to the successful contractor;
- order the Court of Justice 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**

By means of its application, the applicant seeks annulment of the decision of the Court of Justice of 20 July 2006, rejecting its bid filed in response to the open Call for Tenders AM CJ 13/04 for the maintenance, development and support of computer applications (OJ 2005/S 127-125162 & 2005/S 171-169521) and awarding the same Call for Tender to another bidder.

The applicant claims that the contested decision was taken in violation of the Financial Regulation (EC) No 1605/2002 (OJ L 248, 16/09/02, p. 1), its Implementing Rules and Directive 2004/18/EC, through an alleged misinterpretation of the selection criteria, violation of the principles of transparency and equal treatment of the participants.

Moreover, the applicant submits that the contracting authority's decision contains evident errors of assessment in the framework of the evaluation of its offer, exceeding, thus, the discretion that European Institutions dispose in procurement procedures.

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**Action brought on 11 September 2006 — ISD Polska and Industrial Union of Donbass v Commission**

(Case T-273/06)

(2006/C 294/117)

*Language of the case: French*

**Parties**

*Applicants:* ISD Polska sp. z.o.o. (Częstochowa, Poland) and Industrial Union of Donbass Corp. (Donetsk, Ukraine) (represented by: C. Rapin and E. Van den Haute, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

- declare this action admissible;
- annul Article 3 of the Commission decision of 5 July 2005 concerning the aid granted by Poland to Huta Częstochowa SA (notified under C(2005) 1962);
- in the alternative, declare that on the date of this action there is no obligation on Poland to recover the aid and interest referred to in Article 3 of the decision and therefore that the amounts of that aid and interest is not payable;
- in the further alternative, annul the second subparagraph of Article 3(2) of the decision and refer the question of the interest to the Commission for a new decision in accordance with Annex A to this application, or with such other consideration as the Court may indicate in the grounds of the judgment;
- in any event, order the Commission to pay all of the costs;
- if the Court should decide that there is no need to adjudicate, order the Commission to pay the costs pursuant to the combined provisions of Article 87(6) and Article 90(a) of the Rules of Procedure of the Court of First Instance.