

*Decision of the Board of Appeal: Appeal dismissed*

*Pleas in law:* Infringement of Article 7(1)(b) and (c) of Council Regulation No 40/94 <sup>(1)</sup> in that, according to the applicant and contrary to the findings in the contested decision, the term 'PAYWEB CARD' is not descriptive but, on the contrary, distinctive in relation to the goods and services designated.

<sup>(1)</sup> Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

**Action brought on 8 November 2007 — CMB and Christof v Commission and EAR**

(Case T-407/07)

(2008/C 8/39)

*Language of the case: English*

**Parties**

*Applicants:* CMB Maschinenbau & Handels GmbH (Gratkorn, Austria) and J. Christof GmbH (Graz, Austria) (represented by: A. Petsche, N. Niejahr and Q. Azau, lawyers, and F. Young, Solicitor)

*Defendants:* Commission of the European Communities and European Agency for Reconstruction

**Form of order sought**

- Annul the decision;
- order the EAR to produce certain documents;
- order the EAR to pay damages in respect of the loss suffered by the applicants in the amounts of EUR 26 862,17 and EUR 3 197 968,80 for costs and lost profit, plus compensatory interest from the date on which the damage materialised;
- order the EAR to pay interest on the damages from the date of judgment;
- order the EAR and the Commission to pay their own costs and the applicants' costs in connection with these proceedings.

**Pleas in law and main arguments**

The applicants contest the European Agency for Reconstruction's decision of 29 August 2007 confirming the rejection of the applicants' bid and the award of the contract to another tenderer relating to the tender notice EuropeAid/124192/D/SUP/YU (OJ 2006/S 233-248823) for the supply, delivery, installation, after-sales service and training in the use of supplies for treatment and transport of medical waste throughout the Republic of Serbia (excluding Kosovo). The applicants further request compensation for the alleged damages caused by the decision.

In support of their application, the applicants submit that the contracting authority violated the award criteria for the tender, as the offer of the successful tenderer did not meet the technical specifications.

Furthermore, the applicants allege that the contracting authority violated the applicable procurement procedure, that it did not state reasons and that it breached the principle of sound administration.

**Action brought on 7 November 2007 — Crunch Fitness International v OHIM — ILG (CRUNCH)**

(Case T-408/07)

(2008/C 8/40)

*Language of the case: English*

**Parties**

*Applicant:* Crunch Fitness International Inc. (New York, United States) (represented by: J. Barry, Solicitor)

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

*Other party to the proceedings before the Board of Appeal:* ILG Ltd (Dun Laoghaire, Ireland)

**Form of order sought**

- The decision of the Fourth Board of Appeal in relation to class 41 of the CTM be annulled;
- the CTM remain registered for services in class 41; and
- order that OHIM pay its costs both in these proceedings and in the appeal proceedings before OHIM.