

Mark or sign cited: The national word trade mark 'Metec' for goods and services in classes 16, 35, 37, 38, 41 and 42; the international word trade mark 'Metec' for goods and services in classes 16, 35, 37, 38, 41 and 42

Decision of the Opposition Division: Upheld the opposition with respect to all goods and services

Decision of the Board of Appeal: Annulment of the contested decision and rejection of the opposition in its entirety

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal was incorrect to allow the appeal and to state that there is no similarity between the trade marks; infringement of Article 62 of Council Regulation No 40/94 as the Board of Appeal rendered a decision on facts which were not subject to appeal.

Action brought on 9 May 2008 — Infeurope v Commission

(Case T-176/08)

(2008/C 171/84)

Language of the case: English

Parties

Applicant: Infeurope SA (Luxembourg, Luxembourg) (represented by: O. Mader, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- declare that the European Commission has failed to annul the decision of awarding the framework contracts under the call for tenders procedure AO/042/05 of the OHIM on software maintenance;
- declare that the European Commission has failed to terminate the specific contracts concluded under the said framework contracts;
- order the European Commission to pay to the applicant the sum of EUR 37 002 plus 4 % interest on the amount of EUR 31 650 from 29 August 2006, plus 4 % interest on the amount of EUR 3 650 from 3 December 2007, plus 4 % interest on the amount of EUR 1 702 from 3 May 2008; respectively 8 % interest on sum of EUR 37 002 from the date of judgment;
- order the European Commission to pay to the applicant the sum of EUR 1 209 037 plus 4 % interest on the said sum from 3 May 2008, respectively 8 % interest on the said sum from the date of judgment;
- order the European Commission to produce certain documents relating to the procedure for evaluating the tenders;
- order the European Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the declaration that the Commission failed to annul the decision taken by the Office for Harmonisation in the Internal Market (OHIM) awarding multiple framework contracts for the provision of IT maintenance services under the tender procedure AO/042/05 'E-Alicante: software maintenance relating to OHIM core business systems (management and registration of trade marks and designs)' ⁽¹⁾ and that it has failed to terminate the corresponding specific contracts under the framework.

The applicant claims that the tender process as well as the implementation of the specific contracts further to the tender suffer from a series of severe irregularities such as: the irregular award criteria, an incorrect composition of the evaluation committee, the fact that the contracts were awarded after the expiry of the period of tender offers' validity and that the OHIM agreed on various considerable changes to the terms of the specific contracts.

The applicant claims that the OHIM, as contracting authority, had breached the principles of equal treatment, of transparency and of good administration and had misused the instrument of framework contracts. It had further infringed a number of stipulations in the Financial Regulation ⁽²⁾.

The applicant claims that the Commission, as supervisory body of the OHIM ⁽³⁾, had failed to take appropriate action against these infringements. The applicant maintains that the discretion of the Commission whether or not to take action against the breaches of law and establish legality is reduced to zero thus entailing an obligation to act.

Furthermore, the applicant asks to be compensated for the damages suffered as a result of the irregularities in the said tendering procedure and its subsequent implementation.

⁽¹⁾ OJ 2006/S 135-144019.

⁽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 2002 L 248, p. 1).

⁽³⁾ The Article VI.4.2 of the Contract notice concerning the lodging of the appeals makes reference to the Article 118 of the Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) which states that 'Referral shall be made to the Commission within 1 month of the day on which the party concerned first became aware of the act in question'.