

Form of order sought

— Annulment of the defendant's decision (reference: SG.E.3/MV/psi D(2008) 6991) of 2 September 2008.

Pleas in law and main arguments

The applicant has brought an action against the Commission decision by which that institution refused full and unrestricted access to documents connected with a TACIS programme and a TACIS contract to which the applicant was a party. The applicant claims that access to the documents in question is essential for his defence in the action filed by the Commission against him, following termination of the TACIS contract, for reimbursement of the monies paid in advance.

In support of his action the applicant claims, first, that general principles of Community law have been infringed, in particular the right to sound administration and the right to due process, because he, as a concerned party, must be given the possibility to obtain full and unfettered access to documents necessary for his defence and subsequent vindication of his own claims against the Commission.

The applicant also claims, secondly, that a right to full and unfettered access to the files arises from Regulation (EC) No 1049/2001⁽¹⁾, inasmuch as the Commission erred, in particular, in the exercise of its discretionary powers under Articles 4 and 9 of that regulation.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 11 November 2008 — Atlas Transport v OHIM — Hartmann (ATLAS TRANSPORT)

(Case T-482/08)

(2009/C 32/74)

Language in which the application was lodged: German

Parties

Applicant: Atlas Transport GmbH (Düsseldorf, Germany) (represented by: U. Hildebrandt, K. Schmidt-Hern and B. Weichhaus, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Alfred Hartmann (Leer, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 September 2008 (Case R 1858/2007-4); and

— order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'Atlas Transport' for transport operations (transport of goods) in Class 39 (Community trade mark No 545 681).

Proprietor of the Community trade mark: The applicant.

Applicant for the declaration of invalidity: A. Hartmann.

Decision of the Cancellation Division: Dismissal of the application.

Decision of the Board of Appeal: Granting of the application for a declaration that the registration has lapsed.

Pleas in law: Breach of Article 15 and Rules 22 and 40 of Regulation (EC) No 2868/95⁽¹⁾, in so far as an incorrect standard was applied to the proof of use preserving the rights held and as evidence submitted was incorrectly assessed; breach of the procedural requirements of the right to a hearing in accordance with [Rule] 73(2) of Regulation (EC) No 2868/95 and of the duty to give reasons under [Rule] 73(1) of Regulation (EC) No 2868/95; incorrect assessment.

⁽¹⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 11 November 2008 — Longevity Health Products v OHIM — Merck (Kids Vits)

(Case T-484/08)

(2009/C 32/75)

Language in which the application was lodged: German

Parties

Applicant: Longevity Health Products, Inc. (Nassau, Bahamas) (represented by: J. Korab, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Merck KGaA (Darmstadt, Germany)