

Pleas in law and main arguments

This appeal is directed against the order of the Civil Service Tribunal of 4 November 2008 in Case F-133/06 *Marcuccio v Commission*.

In support of the forms of order sought by him, the appellant raises the following pleas in law:

- (a) complete failure to carry out preliminary investigations and failure to rule on a fundamental aspect of the dispute, in so far as the order under appeal fails to adjudicate on the application for a declaration that there is no legal basis for the decision contested before the Civil Service Tribunal.
- (b) complete failure to state adequate reasons in the order under appeal as regards the inadmissibility of the requests that 'the Commission be ordered to return his personal property to the applicant', 'that the contested decision be annulled' and of 'the application for damages', as regards the order that the appellant should pay the costs, and distortion and misrepresentation of the facts, complete failure to carry out any preliminary investigations, confusion and irrationality, and also the erroneous and incorrect interpretation and application of the Community legislation and case-law.
- (c) a procedural error, in that no account was taken of the requirement not to have regard to the arguments contained in the defence in so far as made out of time by the respondent, in a manner which was prejudicial to the interests of the appellant.
- (d) infringement of the rules relating to a fair hearing.

Action brought on 14 January 2009 — Formula One Licensing v OHIM — Racing — Live (F1 — Live)

(Case T-10/09)

(2009/C 55/84)

Language in which the application was lodged: English

Parties

Applicant: Formula One Licensing BV (Amsterdam, The Netherlands) (represented by: B. Klingberg, lawyer)

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

Other party to the proceedings before the Board of Appeal: Racing — Live SA (Montpellier, France)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 16 October 2008 in case R 7/2008-1;
- Order the defendant to pay the costs of proceedings; and

- Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings before the defendant.

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark 'F1 — Live', for goods and services in classes 16, 38 and 41

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: International trade mark registration No 732 134 of the word mark 'F1' for goods and services in classes 16, 38 and 41; German trade mark registration No 30 007 412 of the word mark 'F1' for services in class 41; United Kingdom trade mark registration No 2 277 746 D of the word mark 'F1' for goods and services in classes 16 and 38; Community trade mark registration No 631 531 of the figurative mark 'F1 Formula 1' for goods and services in classes 16, 38 and 41; other marks such as 'F1 Racing Simulation', 'F1 Pole Position' and 'F1 Pit Stop Café'

Decision of the Opposition Division: Rejected the Community trade mark application

Decision of the Board of Appeal: Annulled the contested decision, rejected the opposition and allowed the Community trade mark application to proceed

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal wrongly assessed that there was no likelihood of confusion between the trade marks concerned; infringement of Article 8(5) of Council Regulation 40/94 as the Board of Appeal failed to find that use of the Community trade mark concerned would without due cause take unfair advantage of, and be detrimental to, the distinctive character or the repute of the applicant's earlier trade marks.

Action brought on 14 January 2009 — Özdemir v OHIM — Aktieselskabet af 21. november 2001 (James Jones)

(Case T-11/09)

(2009/C 55/85)

Language in which the application was lodged: English

Parties

Applicant: Rahmi Özdemir (Dreieich, Germany) (represented by: M. Heinrich, I. Hoes, C. Schröder, K. von Werder and J. Wittenberg, lawyers)