

Pleas in law and main arguments

In the present case the applicant seeks the annulment of the defendant's decision to reject its bid submitted in response to a call for an open tender UCA-218-07 for the provision of "Technical maintenance — help desk and on site intervention services for the PC's, printers and peripherals of the general secretariat of the Council" and to award the contract to the successful contractor. The applicant further requests compensation for the alleged damages in account of the tender procedure.

In support of its claims the applicant puts forward four pleas in law.

First, it argues that the defendant committed several manifest errors of assessment concerning: the absence of certification of the winning tenderer, the absence of NATO security clearance of the personnel of the winning tenderer, the fact that the winning tenderer did not dispose of the personnel offered, the qualifications of the personnel of the winning tenderer as opposed to those of the applicant, the knowledge transfer marks and the evaluation of the number of staff proposed by the tenderers.

Second, the applicant claims that the defendant failed to observe its obligations for equal treatment of the candidates and transparency.

Third, it submits that the call for tender included numerous inconsistencies and inaccurate information.

Last, the applicant contends that the defendant infringed its obligation to motivate its acts.

(¹) OJ 2008/S 91-122796

Action brought on 16 February 2009 — Herhof v OHIM — Stabilator (stabilator)

(Case T-60/09)

(2009/C 102/32)

Language in which the application was lodged: German

Parties

Applicant: Herhof-Verwaltungsgesellschaft mbH (Solms, Germany) (represented by: A. Zinnecker and T. Bösling, 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: Stabilator sp. z o.o. (Gydnia, Poland)

Form of order sought

— Annull the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 16 December 2008 in Joined Cases R 483/2008-4 and R 705/2008-4;

— Order the applicant to pay the costs.

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Applicant for a Community trade mark: Stabilator sp. z o.o.

Community trade mark concerned: the figurative mark 'stabilator' for goods and services in Classes 19, 37 and 42, Application No 4 068 961

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

Mark or sign cited in opposition: the word mark 'STABILAT' for goods in Classes 1, 7, 11, 20, 37, 40 and 42

Decision of the Opposition Division: opposition allowed in part and application rejected in part

Decision of the Board of Appeal: annulment in part of the contested decision and rejection of the opposition

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94, (¹) because there is a likelihood of confusion between the marks at issue or at least a likelihood of association.

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