

— Order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of Commission Decision 2008/960/EC of 8 December 2008 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and under the European Agricultural Guarantee Fund (EAGF) inasmuch as it excludes, for the financial years 2005 and 2006, certain expenditure incurred by the French Republic.

In support of its action the applicant relies on two pleas in law alleging:

- misinterpretation and misapplication of Article 11(2)(d) of Regulation No 2200/96 ⁽¹⁾ in so far as, contrary to what the Commission found, the French Government satisfies the conditions laid down by that provision since every producer has the necessary material and, in accordance with the objective of economic effectiveness pursued by that regulation, it may, in certain circumstances, be more appropriate for each producer to hold the necessary material than to use a single sorting, storage and packaging centre provided by the producer organisation;
- misinterpretation and misapplication of Article 11(1)(c), point 3, of Regulation No 2200/96 in so far as the Commission was wrong to take the view that the French Government had not complied with the conditions of that provision, which provides that the rules of association of producer organisations require producer members to market their entire production through the producer organisation although the French legislation provides for producer organisations to play an active role in the marketing of products and the fixing of selling prices.

⁽¹⁾ Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables (OJ 1996 L 297, p. 1).

Action brought on 16 February 2009 — Mundipharma v OHIM — Asociación Farmaceuticos Mundi (FARMA MUNDI FARMACEUTICOS MUNDI)

(Case T-76/09)

(2009/C 102/41)

Language in which the application was lodged: English

Parties

Applicant: Mundipharma GmbH (Limburg (Lahn), Germany) (represented by: F. Nielsen, lawyer)

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

Other party to the proceedings before the Board of Appeal: Asociación Farmaceuticos Mundi (Alfajar (Valencia), Spain)

Form of order sought

- Revoke the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 December 2008 in case R 852/2008-2; and
- Order OHIM to pay the costs.

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 "FARMA MUNDI FARMACEUTICOS MUNDI", for goods and services in classes 5, 35 and 39 — application No 4 841 136

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

Mark or sign cited: Community trade mark registration No 4 304 622 of the trade mark "mundi pharma" for goods and services in classes 5 and 44

Decision of the Opposition Division: Partially rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal wrongly concluded that there was no similarity of the goods and/or services covered by the trade marks in question

Appeal brought on 25 February 2009 by the European Parliament against the judgment of the Civil Service Tribunal delivered on 11 December 2008 in Case F-148/06, Collée v Parliament

(Case T-78/09 P)

(2009/C 102/42)

Language of the case: French

Parties

Appellant: European Parliament (represented by C. Burgos and A. Lukošiušė, acting as Agents)

Other party to the proceedings: Laurent Collée (Luxembourg, Luxembourg)

Form of order sought by the appellant

- annul in its entirety the judgment of the Civil Service Tribunal under appeal;
- give final judgment in the matter by dismissing the action brought by Mr Collée as unfounded;
- make an appropriate order as to costs.

Pleas in law and main arguments

By this appeal, the Parliament seeks the annulment of the judgment of the Civil Service Tribunal (the Tribunal) of 11 December 2008 in Case F-148/06 *Collée v Parliament*, by which the Tribunal annulled the Parliament's decision to award two merit points to Mr Collée under the 2004 promotion procedure.

In support of its appeal, the Parliament relies on four grounds of appeal alleging:

- a distortion of the facts and of the evidence, as the Tribunal stated that Mr Collée had not received a third merit point on the sole ground that his merits were not superior to those of officials who had obtained three points, although the comparative examination carried out with a view to responding to Mr Collée's administrative complaint stated that his staff report was not of a level equivalent to that of officials who had obtained three points;
- failure to state reasons, on the ground that the Tribunal did not explain why it departed from earlier case-law, and contradictory reasoning, first, in paragraphs 42 and 46 as against paragraph 18 of the judgment under appeal and, secondly, in paragraphs 43 and 46 as against paragraphs 44 and 45 of that judgment;
- infringement of Article 45 of the Staff Regulations of Officials of the European Communities and of the case-law relating thereto, in so far as the requirement of superiority of merits applied by the Parliament for the award of a third point is not inconsistent with Article 45 of the Staff Regulations; thus an official must be superior in the decreasing order of merit, to the last official who received three points;
- infringement of the principle of equal treatment as the Tribunal stated that the Parliament had infringed that principle although Mr Collée was not in a situation comparable to that of officials who had received three merit points.

Appeal brought on 23 February 2009 by the Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 9 December 2008 in Case F-52/05, Q v Commission

(Case T-80/09 P)

(2009/C 102/43)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by V. Joris and B. Eggers, acting as Agents)

Other party to the proceedings: Q (Brussels, Belgium)