

The applicant further contends that the failure to comply with the obligations laid down by Article 8 of Decision 2008/969/EC also infringes basic principles and fundamental rights recognised by Community law. In the applicant's submission, the Commission's conduct is contrary to the principle of sound administration, laid down in Article 41 of the Charter of Fundamental Rights of the European Union, since the Commission did not duly inform the applicant in advance in accordance with the requirements of Article 8(1) of Decision 2008/969/EC, denying it the possibility of making its views known. At the same time, the Commission breached its duty of care. Furthermore, the Commission's conduct infringes Article 1 of the Code of Good Administrative Behaviour applicable to Commission staff in their relations with the public.

Finally, the applicant contends that the Commission infringed the right to a prior hearing, rights of defence and the presumption of innocence since the applicant was not given the opportunity to make known its views and its objections regarding the decisions as to registration in the EWS which were to be adopted by the competent Commission organ.

⁽¹⁾ Commission Decision 2008/969/EC, Euratom of 16 December 2008 on the Early Warning System for the use of authorising officers of the Commission and the executive agencies (OJ 2008 L 344, p. 125).

Action brought on 14 August 2009 — skytron energy v OHIM (arraybox)

(Case T-321/09)

(2009/C 267/123)

Language in which the application was lodged: German

Parties

Applicant: skytron energy GmbH & Co. KG (Berlin, Germany) (represented by H.-J. Omsels, lawyer)

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

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 4 June 2009 in Case R 1680/2008-1;
- In the alternative, refer the case back to the Office for Harmonisation in the Internal Market;
- Order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'arraybox' for goods and services in Classes 9, 37, 38 and 42 (application No 6 710 479)

Decision of the Examiner: Registration refused

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009 ⁽¹⁾ as the sign applied for is not descriptive and has the requisite distinctive character.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 18 August 2009 — Connefroy and Others v Commission

(Case T-327/09)

(2009/C 267/124)

Language of the case: French

Parties

Applicants: Philippe Connefroy (Le Rozel, France), Jean-Guy Gueguen (Carantec, France) and EARL de Cavagnan (Bouglon, France) (represented by: C. Galvez, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Annul the contested decision on the basis of the fourth paragraph of Article 230 EC;
- Order the Commission to pay all the costs.

Pleas in law and main arguments

The applicants seek the annulment of Commission Decision C(2009) 203 final of 28 January 2009 ⁽¹⁾, by which the Commission had declared incompatible with the common market the State aid granted by the French Republic to fruit and vegetable producers in the context of 'contingency plans' aimed at facilitating the marketing of agricultural products harvested in France and had instructed the French Republic to recover the aid in question.

The pleas in law and main arguments relied on by the applicants are identical or similar to those relied on in the context of Case T-243/09 *Fedecom v Commission* ⁽²⁾.

⁽¹⁾ OJ 2009 L 127, p. 11 — published under No 2009/402/EC.

⁽²⁾ OJ 2009 C 205, p. 43.