

Pleas in law and main arguments

The measures are actionable, for they are decisive and definitive in nature and have binding effect, and the parties have capacity to bring proceedings.

Both measures are marred by:

Absolute lack of powers: the defendant is not the 'pouvoir adjudicateur' (the contracting authority), because there is no contractual provision whatsoever to support the defendant's conduct. The defendant thus not only lacks powers, but also any competence in these proceedings.

Breach of essential procedural requirements, in particular, the duty to state reasons: as provided for in Article 253 of the Treaty, reasons must be given for Community measures. In accordance with the case-law, the reasoning must be express, clear, coherent and relevant. The measure may not be implied or based on tacit grounds, nor may it be clothed in obscurity. There must be no contradiction between the grounds or between the grounds and the enacting terms. The contested decisions lack any grounds whatsoever. There is also a breach of the essential procedural requirement of an indication of the legal remedies.

infringement of the rules of the Treaty, that is to say, of Articles 211 to 219, of the defendant's own internal regulations and of the principle '*pacta sunt servanda*'.

Action brought on 27 August 2009 — Müller-Boré & Partner v OHIM — Popp and Other (MBP)

(Case T -338/09)

(2009/C 267/132)

Language in which the application was lodged: German

Parties

Applicant: Müller-Boré & Partner (Munich, Germany) (represented by: C. Osterrieth and T. Schmitz, lawyers)

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

Other parties to the proceedings before the Board of Appeal of OHIM: E. Popp (Munich, Germany), W. E. Sajda (Munich), J. Bohnenberger (Munich), V. Kruspig (Munich)

Form of order sought

— Annulment the decision of the Fourth Board of Appeal of OHIM of 23 June 2009 in Case R 1176/2007-4 and amendment of it so as to reject the appeal and objection in their entirety;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: the word mark 'MBP' for services in Classes 35 and 42 (Application No. 1 407 857)

Proprietor of the mark or sign cited in the opposition proceedings: E. Popp, W. E. Sajda, J. Bohnenberger and V. Kruspig

Mark or sign cited in opposition: the word mark 'ip_law@mbp.' for services in Class 42 (Community Trademark No. 667 105) and the special trade name 'mbp.de.' under German trade mark law

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Opposition upheld in part

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 ⁽¹⁾,] since there is no likelihood of confusion between the trade marks at issue.

⁽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 19 August 2009 — Evropaiki Dynamiki v Publications Office of the European Union

(Case T-340/09)

(2009/C 267/133)

Language of the case: English

Parties

Applicant: Evropaiki Dynamiki — Proigmena Systemata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athènes, Greece) (represented by: N. Korogiannakis and M. Dermitzakis, lawyers)

Defendant: Publications Office of the European Union

Form of order sought

— Annul the OPOCE's decision to reject the bids of the applicant, filed in response to the open call for tenders No 10017 "CORDIS" Lot B "Editorial and Publishing Services" and Lot C "Provision of New Digital Information Services" and to select the bid of the applicant filed in response to the open call for tenders No 10017 "CORDIS" Lot E "Development and Maintenance of Core Services", for the award of the above procurement