

Form of order sought

- Declare that the decisions of the Bureau of the Parliament of 9 March and 1 April 2009 are unlawful in so far as they amend the additional pension scheme and abolish the special methods of payment of the additional pension to Members or former Members of the Parliament who voluntarily joined that optional pension scheme;
- Annul the Parliament's decision of 7 August 2009, which refused the applicant 25 % of his pension in the form of a lump sum;
- Order the Parliament to pay the costs.

Pleas in law and main arguments

The action has been brought against the Parliament's decision of 7 August 2009, which was taken to implement the rules on the additional (voluntary) pension scheme in Annex VIII to the Rules governing the payment of expenses and allowances to Members of the European Parliament, as amended by the Parliament's decision of 9 March 2009, and which dismissed the applicant's application for payment, in part (25 %) in the form of a lump sum and in part in the form of an annuity, of his additional pension as from August 2009.

In support of his action, the applicant relies as regards the substance of the case on four pleas in law alleging:

- Infringement of the applicant's acquired rights and of the principle of the protection of legitimate expectations;
- Infringement of the general principles of equal treatment and of proportionality;
- Breach of Article 29 of the Rules governing the payment of expenses and allowances to Members of the European Parliament which provides that the Quaestors and the Secretary-General are responsible for monitoring the interpretation and the strict application of those rules;
- Breach of good faith in the implementation of contracts and nullity of purely enabling clauses.

Action brought on 4 November 2009 — Agriconsulting Europe v Commission**(Case T-443/09)**

(2010/C 11/62)

*Language of the case: Italian***Parties**

Applicant: Agriconsulting Europe SA (Brussels, Belgium) (represented by: F. Sciaudone, R. Sciaudone and A. Neri, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annul the contested decision.
- Order the Commission to pay compensation for the damage suffered.
- Order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant in the present action is a leading management consultancy providing technical advisory services for international development projects. It is bringing an action against the Commission's decision in connection with the award of Lot No 11 in contract notice EuropeAid/127054/C/SER/multi (OJ S 128 of 4 July 2008) not to include among the six economically most advantageous bids that submitted by the consortium of which the applicant was the leading participant and to award that lot to other tenderers.

The applicant puts forward the following pleas in support of its application for annulment:

- distortion of the evidence and the factual circumstances. The contested decision rejected the applicant's bid on the basis that the 'declarations of exclusivity' of three experts in its bid were also to be found in other bids and it was therefore necessary to exclude them from the evaluation. That conclusion is vitiated in so far as it failed to take account of the experts' statements denying that some of those declarations had any value, on the one hand, or actually claiming that they were false, on the other;
- misinterpretation of the consequences to be drawn from the non-compliance of the 'declarations of exclusivity' and infringement of the principle of legal certainty, in so far as the defendant imposed the penalty laid down for cases in which more than one declaration of exclusivity is signed on all the tenders, without considering the role and responsibilities of the company or the expert;
- infringement of legal requirements, of the principle of sound administration and the principal of proportionality, in so far as the defendant failed to exercise the power conferred on it to request clarification where there is some ambiguity concerning some aspect of the tender before confirming that errors exist which may affect the validity of a tender.

The applicant, which also submits that there has been infringement of the obligation to state reasons, seeks, in addition, compensation for the damage suffered on grounds of non-contractual liability for unlawful acts or, in the alternative, for lawful acts.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) owing to the absence of likelihood of confusion of the marks at issue

**Action brought on 29 October 2009 — La City v OHIM —
Bücheler and Ewert**

(Case T-444/09)

(2010/C 11/63)

Language in which the application was lodged: French

Parties

Applicant: La City (La Courneuve, France) (represented by: S. Bénoliel-Claux, lawyer)

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

Other parties to the proceedings before the Board of Appeal of OHIM: Andreas Bücheler and Konstanze Ewert (Engelskirchen, Germany)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 5 August 2009 in Case R 233/2008-1;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Andreas Bücheler and Konstanze Ewert

Community trade mark concerned: the word mark 'citydogs' for goods in Classes 16, 18 and 25 (Application No 4 692 381)

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

Mark or sign cited in opposition: the French word mark 'CITY' for goods in Classes 9, 14, 18 and 25; the opposition is against registration in Classes 18 and 25

Decision of the Opposition Division: opposition upheld

Decision of the Board of Appeal: annulment of the contested decision and dismissal of the opposition

**Action brought on 6 November 2009 — Simba Toys v
OHIM — Seven Towns (Three-dimensional
representation of a cubic toy)**

(Case T-450/09)

(2010/C 11/64)

Language in which the application was lodged: English

Parties

Applicant: Simba Toys GmbH & Co. KG (Fürth, Germany) (represented by: O. Ruhl, lawyer)

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

Other party to the proceedings before the Board of Appeal: Seven Towns Ltd (London, United Kingdom)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 September 2009 in case R 1526/2008-2; and

— Order the defendant and the other party to the proceedings before the Board of Appeal to pay the costs incurred in the appeal proceedings and those incurred before the Court.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: A three-dimensional representation of a cubic toy for goods in class 28

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

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Decision of the Cancellation Division: Rejected the request for a declaration of invalidity

Decision of the Board of Appeal: Dismissed the appeal