

- Order the defendant to pay the costs, including those incurred by the applicant before the Board of Appeal; and
- Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal, should it decide to become an intervener in this case.

#### **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 in black and white “Cheapflights”, for services in classes 38, 39, 41, 42, 43 and 44

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

*Mark or sign cited:* Irish trade mark registration of the figurative sign in colour “CheapFlights”, for services in classes 35, 36, 38, 39, 41, 42, 43 and 44; Irish trade mark application of the word mark “CHEAPFLIGHTS”, for services in classes 35, 39 and 43; Irish trade mark registration of the word mark “CHEAPFLIGHTS”, for services in classes 38, 41, 42 and 44; Irish trade mark registration of the figurative sign “CheapFlights.ie”, for service in classes 35, 39, 41, 42 and 43; International trade mark registration of the figurative sign “CheapFlights”, for services in classes 35, 38, 39 and 42

*Decision of the Opposition Division:* Upheld the opposition in its entirety

*Decision of the Board of Appeal:* Annulled the contested decision and rejected the opposition in its entirety

*Pleas in law:* Infringement of Articles 8(1)(b) of Council Regulation No 207/2009 as the Board of Appeal wrongly held that there was no likelihood of confusion between the trade marks concerned.

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#### **Action brought on 19 November 2009 — Jurašinić v Council**

**(Case T-465/09)**

(2010/C 24/105)

*Language of the case:* French

#### **Parties**

*Applicant:* Ivan Jurašinić (Angers, France) (represented by: M. Jarry, lawyer)

*Defendant:* Council of the European Union

#### **Form of order sought**

- Annul the decision of 22 September 2009 by which the applicant was granted only partial access to the following documents: reports of observers of the European Union in Croatia on the Knin zone from 1 August to 31 August 1995;
- order the Council of the European Union — Secretariat-General to grant electronic access to all parts of the documents sought;
- order the Council of the European Union to pay the applicant EUR 2 000 exclusive of tax or EUR 2 392 inclusive of tax in procedural indemnity with interest, at the rate determined by the ECB in respect of the day the application was lodged.

#### **Pleas in law and main arguments**

By the present action, the applicant seeks annulment of the decision of 22 September 2009 refusing to grant him full access to the reports of the European Union observers in Croatia on the Knin zone from 1 August to 31 August 1995.

The applicant raises three pleas in support of his action.

- disclosure would not undermine the protection of the public interest as regards international relations in accordance with Article 4(1) of Regulation No 1049/2001 <sup>(1)</sup> in so far as:
  - no specific legal protection may apply to the documents at issue;
  - even supposing that specific protection may apply to the documents sought, Article 4(7) of Regulation No 1049/2001 provides that ‘the exceptions as laid down in paragraphs 1 to 3 shall only apply for the period during which protection is justified on the basis of the content of the document.’ Half of the maximum period of protection laid down in Article 4(7) has already passed, which justifies the grant of access to the documents sought;
  - finally, the documents sought are not sensitive documents within the meaning of Article 9 of Regulation No 1049/2001;

— disclosure would not undermine public security in accordance with Article 4(1) of Regulation No 1049/2001 in so far as:

— whether third parties have provided ‘confidential’ information for use in those documents is irrelevant, since Regulation No 1049/2001 does not allow an institution to refuse access to a document in order to protect a hypothetical ‘third party’;

— the Council’s argument that it seeks to ‘protect’ the physical well-being of observers, witnesses and other sources constitutes a desire to protect the private interests of those persons and does not affect public security;

— in order to reconcile its concern for the protection of the identity of certain persons with the need to satisfy the interest of the public, the Council is able, always, to limit public access to the documents sought by deleting from those documents references that would allow identification of those ‘third parties’;

— the documents sought have previously been disclosed.

(<sup>1</sup>) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43)

**Action brought on 23 November 2009 — Comercial Losan v OHIM — McDonald’s International Property (Mc. Baby)**

(Case T-466/09)

(2010/C 24/106)

*Language in which the application was lodged: Spanish*

**Parties**

*Applicant:* Comercial Losan (Zaragoza, Spain) (represented by: A. Vela Ballesteros, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* McDonald’s International Property Co. Ltd (Delaware, United States)

**Form of order sought**

— uphold the action brought against the decision of the Board of Appeal of 1 September 2009 — R 1706/2008-1 Mc Baby/Mc Kids in the opposition proceedings No B 1049362 (Community trade mark application 4 441 393), allow registration of the Community trade mark applied for, and order the opposing party to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Comercial Losan

*Community trade mark concerned:* Figurative mark containing the word element ‘Mc. Baby’ (registration application No 4 741 393) for goods and services in Classes 25, 35 and 39

*Proprietor of the mark or sign cited in the opposition proceedings:* McDonald’s International Property Co. Ltd.

*Mark or sign cited in opposition:* Community figurative mark containing the word element ‘McKids’ (mark No 3 207 354) for goods in classes 16, 25 and 28; Community word mark ‘McDONALD’S’ (mark No 62 497) for goods and services in Classes 25, 28, 29, 30, 31, 32, 35, 41 and 42; and Community figurative mark containing the word element ‘McDONALD’S’ (mark No 62 521) for goods and services in Classes 25, 28, 29, 30, 31, 32, 35, 41 and 42

*Decision of the Opposition Division:* Partial upholding of the opposition.

*Decision of the Board of Appeal:* Partial upholding of the appeal.

*Pleas in law:* Incorrect interpretation and application of Article 8(1)(b) of Regulation No 40/94, replaced by Regulation No 207/2009.

**Action brought on 19 November 2009 — Stelzer v Commission**

(Case T-467/09)

(2010/C 24/107)

*Language of the case: German*

**Parties**

*Applicant:* Dierk Stelzer (Berlin, Germany) (represented by: F. Weiland, lawyer)

*Defendant:* Commission of the European Communities