

Pleas in law and main arguments

The appellant puts forward the following pleas in support of his appeal:

- Breach of Articles 1 and 9 of the general rules for implementing Article 43 of the Staff Regulations and of Article 15(2) and 87(1) of the Conditions of employment of other servants of the European Communities and the provisions of the Guide to Staff Reports;
- Breach of Article 19 of the general implementing provisions and the duty to state reasons;
- Breach of the principle that the parties should be heard, of the equality of the parties and the rights of the defence;
- Breach of law in relation to the connection between the appraisal and the award of points, the rights of the defence and the principle of sound administration;
- Breach of Article 90 of the Staff Regulations of the European Communities ('the Staff Regulations') by the use of documents which were not in the case-file and breach of the principle that the parties should be heard, as well as reversal of the burden of proof to the detriment of the appellant and breach of the duty to state reasons;
- Breach of the duty to have regard to the welfare of officials, owing to the fact that the final assessor negligently took into account incorrect elements, and breach of legal principles as regards the burden of proof;
- Incorrect application of the law, case-law and legal principles as regards Article 90 of the Staff Regulations, the duty to have regard to the welfare of officials, due care, sound administration and legal principles concerning evidence;
- Breach of law as a result of unintelligible findings by the Civil Service Tribunal and incorrect classification of facts, as well as breach of the duty to state reasons and the rules of sound administration;
- Incorrect assessment of facts.

Action brought on 27 November 2009 — McLoughney v OHIM — Kern (Powerball)

(Case T-484/09)

(2010/C 37/56)

Language in which the application was lodged: English

Parties

Applicant: Rory McLoughney (Thurles, Ireland) (represented by: J. M. Stratford-Lysandrides, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Ernst Kern (Zahling, Germany)

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 September 2009 in case R 1547/2006-4;
- Allow the opposition to the Community trade mark application No 3 164 779; and
- In the alternative, remit the opposition to the defendant for further consideration in accordance with the judgment of the Court.

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 word mark 'Powerball', for goods in classes 10, 25 and 28

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

Mark or sign cited: Non-registered mark 'POWERBALL', used in the course of trade in Ireland and the United Kingdom

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 8(3) and 73 of Council Regulation No 40/94 (which became Articles 8(3) and 75, respectively, of Council Regulation No 207/2009) and Rules 50(2) and 52(1) of Commission Regulation No 2868/95⁽¹⁾, as the Board of Appeal failed to consider the opposition under Article 8(3) of Council Regulation No 40/94 and should have recognised that the applicant had the requisite authority to oppose the Community trade mark concerned; infringement of Articles 8(4) and 73 of Council Regulation No 40/94 (which became Article 8(4) and 75, respectively, of Council Regulation No 207/2009) and Rules 50(2) and 52(1) of Commission Regulation No 2868/95, as the Board of Appeal failed to consider the opposition under Article 8(4) of Council Regulation No 40/94 and should have recognised that the applicant was the proprietor of the earlier rights and that it had used the mark cited in the opposition in the course of trade.

⁽¹⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 3 December 2009 — France v Commission

(Case T-485/09)

(2010/C 37/57)

Language of the case: French

Parties

Applicant: The French Republic (represented by: E. Belliard, G. de Bergues, B. Cabouat, and R. Loosli-Surrans, Agents)

Defendant: European Commission

Form of order sought

— Annul Commission Decision 2009/726/EC of 24 September 2009 concerning interim protection measures taken by France as regards the introduction onto its territory of milk and milk products coming from a holding where a classical scrapie case is confirmed;

— Order the Commission to pay the costs.

Pleas in law and main arguments

By its application, the French government requests the Court, under Article 263 of the TFEU, to annul Commission Decision 2009/726/EC of 24 September 2009 concerning interim protection measures taken by France as regards the introduction onto its territory of milk and milk products coming from a holding where a classical scrapie case is confirmed.⁽¹⁾

The decision being challenged orders France to suspend the application of interim protection measures which it adopted following the publication of new scientific opinions about a risk of human exposure to classical scrapie due to the consumption of milk and milk products originating from infected herds of ovine and caprine animals in order to prohibit the introduction onto its territory, for the purposes of human consumption, of milk and milk products coming from a holding where a classical scrapie case is confirmed.

In support of its action, the applicant submits that the decision being challenged must be annulled on the grounds that it infringes the precautionary principle, as regards both risk assessment and risk management.

The applicant claims that the Commission infringed the precautionary principle at the risk assessment stage by ignoring the remaining scientific uncertainties over the risk of the transmission to humans of TSE other than BSE.

In the applicant's opinion, the Commission also infringed the precautionary principle at the risk management stage by failing to adopt any measure in order to restrict the risk of human exposure to classical scrapie.

⁽¹⁾ OJ 2009 L 258, p. 27

Action brought on 7 December 2009 — ReValue Immobilienberatung v OHIM (ReValue)

(Case T-487/09)

(2010/C 37/58)

Language in which the application was lodged: German

Parties

Applicant: ReValue Immobilienberatung GmbH (Berlin, Germany) (represented by S. Fiscoeder and M. Schork, lawyers)