

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

Defendant: European Commission

Other parties to the proceedings before the Board of Appeal of OHIM: Herbert Neuman and Andoni Galdeano del Sel

Form of order sought

- allow the action against the decision of 14 October 2009 of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) in Case R 1323/2008-3;
- annul OHIM's decision;
- order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Community registered design No 000 426 895-0002 for ornamentation for T-shirts, ornamentation for caps, ornamentation for stickers, ornamentation for printed material including advertising material.

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity: Herbert Neuman and Andoni Galdeano del Sel

Trade mark right of applicant for the declaration: figurative Community mark No 1 312 651, for goods in Classes 25, 28 and 32 of the Classification of Nice.

Decision of the Cancellation Division of the Designs Department: allow the application and declare the design to be invalid.

Decision of the Board of Appeal: annul the contested decision and, pursuant to the power conferred on it by Article 60(1) of Regulation No 6/2002 on Community designs, decide the appeal on its merits and declare the invalidity of the Community design.

Pleas in law: incorrect interpretation of Article 6(1) of Regulation No 6/2002.

Action brought on 31 December 2009 — De Post v Commission

(Case T-514/09)

(2010/C 51/73)

Language of the case: English

Parties

Applicant: De Post NV van publiek recht (Brussel, Belgium) (represented by: R. Martens and B. Schutyser, lawyers)

Form of order sought

- the annulment of the decision of the Publications Office of the European Union to award the contract referred to in the invitation to tender No 10234 'Daily transport and delivery of the Official Journal, books, other periodicals and publications' (OJ 2009/S 176-253034) to 'Entreprises des Postes et Télécommunications Luxembourg' and not to the applicant, as notified to the latter on 17 December 2009;

- in the event that, at the time of the rendering of the judgment, the Publications Office would have already signed the contract with Entreprises des Postes et Télécommunications Luxembourg pursuant to invitation to tender No 10234, a declaration that this contract is null and void;

- an award of damages as compensation for the loss that the applicant has incurred as a consequence of the contested decision, provisionally estimated at EUR 2 386 444,94, to be increased by the moratory and compound interest as from the date of the filing of this application;

- an order that the European Commission pays the costs of the proceedings, including the expenses for legal counsel incurred by the applicant.

Pleas in law and main arguments

By means of its application, the applicant seeks on the one hand, the annulment of the decision of the Publications Office of the European Union (hereinafter 'the Publications Office') of 17 December 2009, to award the contract referred to in the invitation to tender No 10234 'Daily transport and delivery of the Official Journal, books, other periodicals and publications' (OJ 2009/S 176-253034), to Entreprises des Postes et Télécommunications Luxembourg (hereinafter 'Post Luxembourg') and, consequently, not to award the contract to the applicant and, on the other, compensation of an estimated amount of 2 386 444,94 EUR for the damages allegedly suffered by the applicant following the rejection of its tender.

In support of its application, the applicant puts forward a single plea in law, consisting of four parts.

The first and only plea in law raised by the applicant points at the alleged infringement by the Publications Office of the principles of transparency and equal treatment of tenderers contained in Article 15 TFEU and in Article 89 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (hereinafter 'the Financial Regulation')⁽¹⁾, to the infringement of the obligation to award the contract on the basis of an evaluation of the selection criteria contained in Article 100(1) of the Financial Regulation, to its failure to adequately state the reasons for its decision (breach of Article 296 TFEU) and to the several manifest errors of assessment it has allegedly made, thus invalidating its decision that the tender of Post Luxembourg, and not that of the applicant, is the economically the most advantageous tender.

In the first part of the plea in law, the applicant claims that the Publications Office has failed to base its decision on an evaluation of the selection and award criteria, in breach of Article 100 (1) of the Financial Regulation.

In the second part of the plea in law, the applicant argues that the Publications Office has applied various sub criteria in its evaluation of the tenders that were not contained in the tender specifications and has thus violated the principle of transparency as laid down in Article 15 TFEU and Article 89 of the Financial Regulation.

In the third part of its plea, the applicant claims that the Publications Office has applied the open-ended technical award criteria in an inconsistent manner, effectively removing all transparency from the evaluation process.

In the fourth part of its plea, the applicant contends that the Publications Office, in violation of Articles 15, 296 TFEU, 89 of the Financial Regulation as well as the general procedural requirements of the duty to state reasons and of transparency, has not provided an adequate and unequivocal statement of reasons for its evaluation of the tenders, the motivation of the decision allegedly being contradictory and vitiated by manifest errors of assessment.

Further, the applicant submits that since the contested decision is vitiated by breaches of European law, the Publications Office has committed a fault and is thus liable under Article 340 TFEU. In fact, the applicant claims that due to the decision to award the contract to Post Luxembourg instead of the applicant, the latter has incurred a serious loss, consisting of a chance to have the contract awarded to it and of all the expenses made by it relating to the preparation and the drafting of the tender, as well as in defending its position.

⁽¹⁾ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1)

Appeal brought on 21 December 2009 by Luigi Marcuccio against the order of the Civil Service Tribunal made on 7 October 2009 in Case F-3/08, Marcuccio v Commission

(Case T-515/09 P)

(2010/C 51/74)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

- In any event, set aside in its entirety and without exception the order under appeal,
- declare that the action at first instance, in relation to which the order under appeal was made, was perfectly admissible in its entirety and without any exception whatsoever,
- allow in its entirety and without any exception whatsoever the relief sought by the appellant at first instance;
- order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation to both the proceedings at first instance and the present appeal proceedings;
- in the alternative, refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.

Pleas in law and main arguments

The present appeal is brought against the order of the Civil Service Tribunal (CST) of 7 October 2009 in Case F-3/08. That order dismissed as manifestly unfounded an action seeking annulment of the Commission's decision refusing to send to the appellant a translation in Italian of a previous decision and an order that the Commission pay compensation for the damage resulting from that refusal. The order under appeal also ordered the appellant, pursuant to Article 94(a) of the Rules of Procedure of the CST, to pay to the Tribunal the sum of EUR 1 000.