

Pleas in law and main arguments

Applicant for a Community trade mark: De Lucia

Community trade mark concerned: Figurative mark composed of the word element 'De Luca/La natura pratica del gusto' (application for registration No 4 962 346) for goods in Classes 29, 30 and 31.

Proprietor of the mark or sign cited in the opposition proceedings: Egidio Galbani SpA.

Mark or sign cited in opposition: Community word mark 'LUCIA' (No 620 716) for goods in Classes 29 and 30; Community figurative mark composed of the word element 'Galbani-Santa Lucia' (No 2 302 677) for goods in Class 29; national (Italian registration No 67 470) and international (No 256 299) figurative mark 'LUCIA' for goods in Class 29; national (Italian registration No 597 377), international (No 601 651) and Community (No 70 185) figurative mark 'Santa Lucia' for goods in Classes 29 and 30; national (Italian registration No 131 028) and international (No 256 299) word mark 'Santa Lucia' for goods in Class 29, and Community word mark 'Santa Lucia' (No 70 128) for goods in Classes 29 and 30.

Decision of the Opposition Division: Opposition upheld in part insofar as concerns certain goods in Class 31.

Decision of the Board of Appeal: Appeal granted insofar as concerns 'tobacco' (Class 31) and authorisation granted for the registration of this product.

Pleas in law: Misapplication of Article 8(1)(b) of Regulation No 207/2009 and no and/or inadequate reasons given in relation to the request that Article 12(a) of the regulation be applied.

Defendant: European Commission

Form of order sought

— to annul Commission Regulation (EC) No 954/2009 of 13 October 2009 insofar as it concerns the applicant;

— to order the European Commission to pay the applicant's costs.

Pleas in law and main arguments

By means of its application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of Commission Regulation (EC) No 954/2009 of 13 October 2009 ⁽¹⁾ amending for the 114th time Council Regulation (EC) No 881/2002 ⁽²⁾ imposing certain specific restrictive measures directed against persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, by virtue of which the applicant was placed on the list of persons and entities whose funds and economic resources are frozen.

The applicant's name was initially added to Annex I of Council Regulation (EC) No 881/2002 by Commission Regulation (EC) No 2049/2003 of 20 November 2003 ⁽³⁾, which was later replaced by Commission Regulation (EC) No 46/2008 of 18 January 2008 ⁽⁴⁾. By its judgement of 3 December 2009 in Joint Cases *Hassan v Council and the Commission* (C-399/06 P) and *Ayadi v Council* (C-403/06 P) ⁽⁵⁾, the Court of Justice of the European Union annulled Council Regulation (EC) No 881/2002, as amended by Regulation (EC) No 46/2008, insofar as it concerns the applicant.

In support of its action, the applicant relies on the following pleas in law:

First, the applicant claims that the contested regulation infringes the applicant's rights of defence, including the right to be heard and the right to effective judicial protection, and that it fails to remedy the infringements of those rights. Moreover, it is submitted that the Commission failed to provide evidence justifying the freeze of the applicant's assets thereby preventing the applicant from defending himself with regard to this evidence.

Second, the applicant contends that the Commission failed to provide convincing reasons for maintaining the asset freeze against the applicant, in violation of its obligation under Article 296 TFEU.

Action brought on 7 January 2010 — Al Saadi v Commission

(Case T-4/10)

(2010/C 51/84)

Language of the case: English

Parties

Applicant: Faraj Faraj Hassan Al Saadi (Leicester, United Kingdom) (represented by: J. Jones, Barrister, Mudassar Arani, Solicitor)

Third, the applicant claims that the Commission failed to undertake an assessment of all relevant facts and evidence in deciding whether to enact the contested regulation and therefore manifestly erred in its assessment. The applicant further claims that he has never engaged in any form of terrorism related activity, or that any form of financial sanctions or preventive measures against him is necessary.

Fourth, the applicant submits that the indefinite restrictions of the applicant's right to property imposed by the contested regulation amount to a disproportionate and intolerable interference with the applicant's right to respect for property which is not justified by compelling evidence.

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- (¹) Commission Regulation (EC) No 954/2009 of 13 October 2009 amending for the 114th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (OJ 2009 L 269, p. 20)
- (²) Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9)
- (³) Commission Regulation (EC) No 2049/2003 of 20 November 2003 amending for the 25th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 (OJ 2003 L 303, p. 20)
- (⁴) Commission Regulation (EC) No 46/2008 of 18 January 2008 amending for the 90th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (OJ 2008 L 16, p. 11)
- (⁵) Judgment of the Court of Justice of 3 December 2009, *Hassan v Council and the Commission* (C-399/06 P) and *Ayadi v Council* (C-403/06 P), not yet published in the ECR

Action brought on 11 January 2010 — Sviluppo Globale v Commission

(Case T-6/10)

(2010/C 51/85)

Language of the case: Italian

Parties

Applicant: Sviluppo Globale GEIE (Rome, Italy) (represented by: F. Sciaudone, R. Sciaudone and A. Neri, lawyers)

Defendant: European Commission

Form of order sought

- Annul the decisions of 10 November 2009 and 26 November 2009.
- Order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought, first, against the Commission's decision of 10 November 2009 by which the Commission rejected the tender submitted by the ITAK consortium (of which the applicant was a member, being responsible for the whole of the management and administration of the consortium itself) in call for tenders EUROPEAID/127843/D/SER/KOS for the provision of support services to the customs and tax authorities in Kosovo, and, second, against the Commission's decision of 26 November 2009 concerning ITAK's application for access to documents relating to the call for tenders in question.

In support of its application for annulment of the decision of 10 November 2010, the applicant makes the following pleas:

- Infringement of the duty to state reasons, insofar as the Commission never provided information on the characteristics and relative advantages of the successful tender.
- Infringement of the Commission's obligations under point 2.4.15 of the 'Practical Guide to contract procedures for EU external actions' of the European Community and of the Commission's duty to exercise due care in administrative procedure. It is submitted in this connection that the defendant failed to reply to the complaints lodged in accordance with the procedure laid down in point 2.4.15 of the Practical Guide.
- Manifest error of assessment of the quality of the technical proposal submitted by the ITAK consortium, insofar as the evaluation committee considered that a proposal submitted by three administrations (tax and customs) of as many as three EU Member States was insufficient and technically inadequate.
- Manifest error of assessment of the quality of the technical proposal of the successful bid. It is submitted in this connection that the evaluation committee awarded an extremely high number of points to a bid submitted a consortium of computer experts with a team leader who, in the past, had been assessed as mediocre by the Commission.

In support of its application for annulment of the decision of 26 November 2009, the applicant makes the following pleas:

- Infringement of Article 7 of Regulation No 1049/2001, (¹) insofar as the Commission failed to handle promptly the application for access, failed to send an acknowledgement of receipt, and took the view that it could simply disregard the application.