

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

*Other party to the proceedings before the Board of Appeal:* Natura Cosméticos, SA (Itapecerica da Serra, Brazil)

### 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 23 November 2009 in case R 1558/2008-2;
- Order the defendant to pay the costs of the proceedings; and
- Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings before the defendant.

### 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 'NATURAVIVA', for goods and services in classes 3, 5 and 44

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

*Mark or sign cited:* German trade mark registrations of the mark 'VIVA', for goods in class 3; Community trade mark registration of the mark 'VIVA', for goods in class 3

*Decision of the Opposition Division:* Rejected the Community trade mark application in its entirety

*Decision of the Board of Appeal:* Upheld the appeal

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

**Action brought on 5 March 2010 — Luxembourg v Commission**

(Case T-109/10)

(2010/C 134/67)

*Language of the case:* French

### Parties

*Applicant:* Grand Duchy of Luxembourg (represented by: C. Schiltz, Agent, and P. Kinsch, lawyer)

*Defendant:* European Commission

### Form of order sought

- Annul the contested decision in so far as it applies to the Grand Duchy of Luxembourg;
- Order the Commission to pay the costs.

### Pleas in law and main arguments

The applicant seeks the annulment, in so far as it applies to the Grand Duchy of Luxembourg, of Commission Decision C(2009) 10712 of 23 December 2009 reducing the assistance granted to the Community Initiative Interreg II/C 'Rhine/Meuse Flooding\*' in the Kingdom of Belgium, Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands by the European Regional Development Fund (ERDF) under Commission Decision C(97) 3742 of 18 December 1997 (ERDF No. 970010008).

In support of its action, the applicant puts forward two pleas in law.

By the first plea in law, the applicant claims that if the actions for annulment brought by the Dutch and German authorities are upheld, the Grand Duchy of Luxembourg should benefit as a result. If it is found that the errors and weaknesses, allegedly systematic, which the Commission's audit was thought to have revealed in the functioning of the program in question in the Netherlands and Germany, do not in reality exist, the very basis of the decision's reasoning fails and with it the linear financial correction applied to the projects implemented in Luxembourg.

The second plea in law alleges the illegality of the extension, to the Grand Duchy of Luxembourg, of a financial adjustment\* that might be justified only in respect of other Member States. No anomalies have been found in the operation\* of the program in the Grand Duchy of Luxembourg. The fact that Luxembourg agreed to participate in a joint project with Germany, Belgium, France and the Netherlands does not justify the negative effects, in terms of financial adjustment\* of its own projects, of errors or weaknesses that were discovered during the audit of Dutch or German projects, and which consist almost exclusively in alleged breaches of provisions of the procedure for awarding public contracts. Despite the fact that this is a matter of joint participation by five Member States in the same program, procedures for public procurement\* awarding public contracts come within the exclusive responsibility of the national authorities of the Member States concerned.

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### Action brought on 8 March 2010 — *Insula v Commission*

(Case T-110/10)

(2010/C 134/68)

*Language of the case: French*

#### Parties

*Applicant:* Conseil scientifique international pour le développement des îles (Insula) (Paris, France) (represented by: J.-D. Simonet and P. Marsal, lawyers)

*Defendant:* European Commission

#### Form of order sought

- Declare the action to be admissible and well-founded;
- Declare that the Commission's demand for repayment of a sum of EUR 84 120 is unfounded and, therefore, order the Commission to issue a credit note in the sum of EUR 84 120;
- Order that the action be joined to Case T-366/09, on account of the connection between them, for the purposes of the written and oral procedure;
- Order the Commission to pay the costs.

#### Pleas in law and main arguments

By the present action, based on an arbitration clause, the applicant requests the Court to declare that the debit note of 28 January 2010 by which the Commission, following an audit report from OLAF, demanded recovery of the advances paid to the applicant, does not comply with the terms of the EL HIERRO (NNE5/2001/950) contract concluded within the framework of a specific program for research, technological development and demonstration on energy, the environment and sustainable development.

The applicant puts forwards two pleas in law.

By the first plea in law, it challenges the enforceability of the debt claimed by the Commission following the audit carried out in 2005.

By the second plea in law, it claims that the Commission, by issuing the new debit note, is in breach of its contractual obligations which no longer entitle it to demand, six years after the last payment to Insula and without notification on its part in the period laid down by the contract, additional supporting documentary evidence.

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### Action brought on 8 March 2010 — *Germany v Commission*

(Case T-114/10)

(2010/C 134/69)

*Language of the case: German*

#### Parties

*Applicant:* Federal Republic of Germany (represented by: J. Möller and C. Blaschke, Agents, and U. Karpenstein, lawyer)

*Defendant:* European Commission

#### Form of order sought

- Declare null and void Commission Decision C(2009) 10712 of 23 December 2009 on the reduction in the financial aid granted to the Rhine-Meuse flood protection programme under Community initiative programme Interreg II/C in the Kingdom of Belgium, the Federal Republic of Germany, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands by the European Regional Development Fund (ERDF) pursuant to Commission Decision C(97)3742 of 18 December 1997 (ERDF No 970010008);