

Other party to the proceedings before the Board of Appeal of OHIM: SPORT EYBL & SPORTS EXPERTS GmbH (Wels, Austria)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 July 2010 in Case R 1393/2009-1;
- order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: SPORT EYBL & SPORTS EXPERTS GmbH.

Community trade mark concerned: Figurative mark containing the word element 'SE© SPORTS EQUIPMENT' for goods in Classes 18 and 25.

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

Mark or sign cited in opposition: German word mark and international registration 'SE' for goods in Class 25 and German word marks 'SE So Easy' and 'SE-Blusen' for goods in Classes 14, 18, 24 and 25.

Decision of the Opposition Division: Opposition allowed in part.

Decision of the Board of Appeal: The contested decision was annulled and remitted to the Opposition Division for further consideration.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009⁽¹⁾ in that the marks at issue are identical and there is a likelihood of confusion.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 4 October 2010 — Département du Gers v Commission

(Case T-478/10)

(2010/C 346/95)

Language of the case: French

Parties

Applicant: Département du Gers (Auch, France) (represented by: S. Mabile and J.-P. Mignard, lawyers)

Defendant: European Commission

Form of order sought

- annul Decision 2010/419/EU of the European Commission of 28 July 2010 authorising the marketing of products

containing, consisting of, or produced from genetically modified maize Bt11 (SYN-BTØ11-1), pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council;

- order the Commission to pay all the costs.

Pleas in law and main arguments

The applicant, a French 'département' with a large agricultural sector and which cultivates vast fields of maize, seeks the annulment of Commission Decision 2010/419/EU authorising the marketing of genetically modified maize or products containing such maize.

In support of its action, the applicant raises two pleas in law:

- A plea of illegality raised against Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed,⁽¹⁾ on the basis of which the contested decision was adopted, in so far as:

- Regulation No 1829/2003 infringes the principle of institutional balance in that (i) the European Parliament did not have any power during the authorisation procedure while the Commission had too much power, and (ii) the Member States were left without any discretion;

- Regulation No 1829/2003 infringes the precautionary principle in that it fails to take sufficient account of the threats to public health, the environment, agriculture and rearing which genetically modified food and feed would pose;

- Regulation No 1829/2003 infringes the rights of consumers, first, by failing to provide for any measure enabling consumers to be informed that the animals which they consume have been fed GMOs and, second, by permitting substantively incorrect information regarding the absence of GMOs in products which actually contain GMOs but in a proportion no higher than 0.9 %;

- the contested decision is unlawful:

- it fails to provide sufficient reasoning, which constitutes an infringement of an essential procedural requirement, in so far as the Commission's decision merely refers to the opinion of the European Food Safety Authority ('EFSA');

- the Commission failed to exercise the powers invested in it ('incompétence négative') by refraining from exercising its discretion, which constitutes a misuse of procedure;

- the precautionary principle was infringed, since the methods of evaluation used by EFSA were incomplete and the evaluation of maize Bt11 was too uncertain;

— the rights of consumers were infringed by failing to label animals fed with maize Bt11 and due to a lack of transparency in relation to products containing less than 0.9% of maize Bt11.

(¹) OJ 2003 L 268, p. 1.

Action brought on 4 October 2010 — Département du Gers v Commission

(Case T-479/10)

(2010/C 346/96)

Language of the case: French

Parties

Applicant: Département du Gers (Auch, France) (represented by: S. Mabile and J.-P. Mignard, lawyers)

Defendant: European Commission

Form of order sought

— Annul Decision 2010/420/EU of the European Commission of 28 July 2010 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize MON89034xNK603 (MON-89034-3xMON-00603-6) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and the main arguments raised by the applicant are identical or essentially the same as those raised in Case T-478/10 *Département du Gers v Commission*.

Action brought on 4 October 2010 — Département du Gers v Commission

(Case T-480/10)

(2010/C 346/97)

Language of the case: French

Parties

Applicant: Département du Gers (Auch, France) (represented by: S. Mabile and J.-P. Mignard, lawyers)

Defendant: European Commission

Form of order sought

— annul Decision 2010/426/EU of the European Commission of 28 July 2010 authorising the placing on the market of products containing, consisting of, or produced from

genetically modified maize Bt11xGA21 (SYN-BT011-1xMON-00021-9) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and the main arguments raised by the applicant are identical or essentially the same as those raised in Case T-478/10 *Département du Gers v Commission*.

Action brought on 4 October 2010 — Département du Gers v Commission

(Case T-481/10)

(2010/C 346/98)

Language of the case: French

Parties

Applicant: Département du Gers (Auch, France) (represented by: S. Mabile and J.-P. Mignard, lawyers)

Defendant: European Commission

Form of order sought

— annul Decision 2010/429/EU of the European Commission of 28 July 2010 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize MON 88017 x MON 810 (MON-88017-3 x MON-00810-6) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and the main arguments raised by the applicant are identical or essentially the same as those raised in Case T-478/10 *Département du Gers v Commission*.

Action brought on 4 October 2010 — Département du Gers v Commission

(Case T-482/10)

(2010/C 346/99)

Language of the case: French

Parties

Applicant: Département du Gers (Auch, France) (represented by: S. Mabile and J.-P. Mignard, lawyers)

Defendant: European Commission