

Pleas in law and main arguments

By its application, the applicant seeks the annulment of Commission Decision C(2010) 5724 Final of 23 August 2010 on the application of financial corrections to assistance from the EAGGF, 'guidance' section, allocated to the Community initiative programme CCI 2000.FR.060.PC.001 (France — LEADER+). That decision provides that the assistance from the EAGGF, 'guidance' section, which was allocated pursuant to Commission Decision C(2001) 2094 of 7 August 2001, in respect of the expenditure effected under the Community initiative programme Leader+ in France is reduced by EUR 7 437 217,61.

Principally, the applicant submits that the contested decision should be annulled on the ground that the Commission wrongly interpreted and applied Article 9(l) and the third subparagraph of Article 32(1) of Regulation No 1260/1999.⁽¹⁾ The Commission took the view that the local action groups (LAGs) were the final beneficiaries of the Community initiative programme Leader+. However, the final beneficiaries of that programme were not the LAGs, but the project promoters. Consequently, contrary to what it maintains, the Commission was not led to pay in advance the expenditure effected by the final beneficiaries of the programme Leader+.

In the alternative, the applicant submits that the contested decision should be annulled because the Commission infringed the principle of the protection of legitimate expectations. By not adopting conclusions following an audit carried out in April 2005, then by not suspending the expenditure concerned, the Commission acted in a way which was liable to make the French authorities believe that the Commission was not calling into question their interpretation of the role of the LAGs and that, in any event, their management system concerning statements of expenditure did not involve any serious failings justifying a financial correction.

In the further alternative, the applicant submits that the contested decision should be annulled because the Commission should have chosen a lower amount of financial correction. First, the Commission erred as regards the amount of the basis of assessment to take into account in order to calculate the financial correction of 5%. Secondly, the Commission infringed Article 39(3) of Regulation No 1260/1999 by not choosing a financial correction proportionate to the financial implications of the shortcomings found.

⁽¹⁾ Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).

Action brought on 4 November 2010 — Pharmazeutische Fabrik Evers v OHIM — Ozone Laboratories Pharma (HYPOCHOL)

(Case T-517/10)

(2011/C 13/60)

Language in which the application was lodged: English

Parties

Applicant: Pharmazeutische Fabrik Evers GmbH & Co. KG (Pinneberg, Germany) (represented by: R. Kaase and R. Möller, lawyers)

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

Other party to the proceedings before the Board of Appeal: Ozone Laboratories Pharma SA (Bucureşti, Romania)

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 1st September 2010 in case R 1332/2009-4; and

— Order the defendant to pay the costs of the proceedings.

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Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The word mark 'HYPOCHOL', for goods in class 5 — Community trade mark application No 5718069

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

Mark or sign cited: German trade mark registration No 1171145 of the figurative mark 'HITRECHOL', for goods in class 5

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assumed that there was no likelihood of confusion between the trade marks due to a lacking similarity between the signs.