

GENERAL COURT

Judgment of the General Court of 15 February 2011 — Yorma's v OHIM — Norma Lebensmittelfilialbetrieb (YORMA'S)

(Case T-213/09) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for the Community figurative mark including the word element 'yorma's' — Earlier Community word mark NORMA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 95/11)

Language of the case: German

Parties

Applicant: Yorma's AG (Deggendorf, Germany) (represented by: A. Weiß, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Schäffner, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Norma Lebensmittelfilialbetrieb GmbH & Co. KG (Nuremberg, Germany) (represented by: A. von Welser, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 20 February 2009 (Case R 1879/2007-1), concerning opposition proceedings between Norma Lebensmittelfilialbetrieb GmbH & Co. KG and Yorma's AG

Operative part of the judgment

The Court:

1. *dismisses the action;*
2. *orders Yorma's AG to pay the costs.*

⁽¹⁾ OJ C 180, 1.8.2009.

Action brought on 21 January 2011 — Republic of Hungary v European Commission

(Case T-37/11)

(2011/C 95/12)

Language of the case: Hungarian

Parties

Applicant(s): Republic of Hungary (represented by: M.Z. Fehér, K. Szíjjártó and G. Koós, Agents)

Defendant(s): European Commission

Form of order sought

- Annulment of the Commission debit note and recovery order No 3241011280, in so far as, in respect of the Republic of Hungary, it classifies as not eligible for subsidy under the Schengen Facility certain expenditure relating to measures 1, 3, 4, 5 and 6 of objective III/A, to the customs objective III/B and, under objective I/C, to the Mohács inland waterway border control facility and the railway station at Eperjeske.
- In the alternative, partial annulment of the Commission debit note and recovery order No 3241011280, in so far as, in respect of the Republic of Hungary, it classifies as not eligible or only partially eligible for subsidy under the Schengen Facility certain expenditure relating to measures 1, 3, 4, 5 and 6 of objective III/A, and to the customs objective III/B.
- An order that the Commission pay the costs.

Pleas in law and main arguments

The applicant raises the following pleas in law in support of its application:

1. Principal claim: breach of legitimate expectations, breach of trust and breach of the principle of legal certainty
 - The applicant states that, having regard to the lack of clarity in the legal background and the considerable amount of aid paid out of the Schengen Facility, it considered it reasonable to rely, throughout the implementation of the programme, on the information provided by the Commission in response to express requests for its position and in the frequent reports issued on the Indicative Schedule.
 - In the opinion of the applicant, approval of the Indicative Schedule, by way of prior authorisation, the checks carried out by the Commission during the implementation of the schedule and the cooperation with the Member States entail that, given that the Commission carries out *ex post facto* checks of the eligibility for subsidy of projects, the eligibility for subsidy of projects reviewed several times without being criticised by the Commission may not be questioned. The applicant states that the Commission gave 'guarantees' in the financing decisions which caused it to have a legitimate expectation that the measures listed in the Indicative Schedule were eligible for subsidy.