

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'ENDURACE', for goods in class 12 and services in classes 35 and 37 — Community trade mark application No 6419824

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Community trade mark registration No 5819149 of the figurative mark 'ENDURANCE' and device in colours, for goods in class 12

Decision of the Opposition Division: Partially rejected the Community trade mark application

Decision of the Board of Appeal: Rejected the applicant's appeal and partially allowed the opponents' request submitted under Article 8(3) RPBoA ⁽¹⁾, and as a result partially rejected the Community trade mark application

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 likelihood of confusion.

⁽¹⁾ Commission Regulation (EC) No 216/96, of 5 February 1996, laying down the rules of procedure of the Boards of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs), amended by Commission Regulation (EC) No 2082/2004, of 6 December 2004

Action brought on 21 February 2011 — ClientEarth v Commission

(Case T-111/11)

(2011/C 130/29)

Language of the case: English

Parties

Applicant: ClientEarth (London, United Kingdom) (represented by: P. Kirch, lawyer)

Defendant: European Commission

Form of order sought

— declare the Commission in violation of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters;

— declare the Commission in violation of Regulation No 1367/2006 ⁽¹⁾;

— declare the Commission in violation of Regulation No 1049/2001 ⁽²⁾;

— annul the implied decision under Article 8(3) of Regulation No 1049/2001, which is the failure by the Commission to reply within the prescribed time-limits to the applicants confirmatory application by which the Commission withheld the requested documents; and

— order the Commission to pay the applicant's costs, including the costs of any intervening parties.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law.

1. First plea in law, alleging that the contested decision violates Articles 8(1) and (2) of Regulation No 1049/2001 for not replying within the prescribed time-limits to the applicant's confirmatory application and not providing detailed reasons for doing so.
2. Second plea in law, alleging that the contested decision violates Article 4(1)(2) and (4) of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters for failure to provide the applicant access to the requested conformity-checking studies and implementation action plans and to provide detailed reasons to do so. The contested decision also violates Article 6(1) of Regulation No 1367/2006 for failure to interpret the exceptions provided under Article 4 of Regulation No 1049/2001 in a restrictive way.
3. Third plea in law, alleging that the contested decision violates Article 4(2)(b) of Regulation No 1367/2006 for not disseminating the requested information in the registers of the Commission.
4. Fourth plea in law, alleging that the contested decision violates Article 7 of Regulation No 1367/2006 for not informing the applicant to which Directorate General it should request to have access to the documents concerning Directives 1998/81/EC ⁽³⁾ and 2001/18/EC ⁽⁴⁾ or transferring the request to the relevant Directorate General.
5. Fifth plea in law, alleging that the contested decision violates Article 4(2) third indent of Regulation No 1049/2001 for failure to provide the applicant access to the requested conformity-checking studies and implementation action plans. The disclosure of the requested documents would not undermine the protection of the purpose of investigations under Article 4(2) or prevent the proper conduct of potential infringement procedures based on Article 258 of the TFEU. The contested decision violates Article 4(6) of Regulation No 1049/2001 for failure to provide partial access to the requested documents.
6. Sixth plea in law, alleging that the contested decision violates article 4(3) first subparagraph of Regulation No 1049/2001. The disclosure of the requested documents would not seriously undermine the Commission's decision-making process.

7. Seventh plea in law, alleging that the contested decision violates Article 4(2) last indent and Article 4(3) of Regulation No 1049/2001 for failure to assess whether there is an overriding public interest in disclosure and to provide a detailed statement of reasons for such a refusal.

- (¹) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13)
- (²) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43)
- (³) Council Directive 98/81/EC of 26 October 1998 amending Directive 90/219/EEC on the contained use of genetically modified micro-organisms (OJ 1998 L 330, p. 13)
- (⁴) Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC — Commission Declaration (OJ 2001 L 106, p. 1)

Action brought on 2 March 2011 — *Attey v Council*

(Case T-118/11)

(2011/C 130/30)

Language of the case: French

Parties

Applicant: Philipp Attey (Abidjan, Côte d'Ivoire) (represented by: J. -C. Tchikaya, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- annul Council Decision 2011/18/CFSP of 14 January 2011 amending Council Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire, and Council Regulation (EU) No 25/2011 of 14 January 2011 amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire, to the extent that they concern the applicant;
- order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law alleging a manifest error of assessment, in so far as the restrictive measures taken against the applicant on the ground that he is obstructing the process of peace and reconciliation in Côte d'Ivoire and refuses to accept the result of the presidential election are based on the fact that the defendant wrongly considered that A. Ouattara had been elected president of the Republic of Côte d'Ivoire, whereas L.

Gbagbo was declared elected president by the Constitutional Council.

2. Second plea in law alleging a misuse of powers, in so far as the contested acts (i) pursue an aim other than that defined in Article 21 TEU, namely the advancement in the wider world of democracy and of the rule of law, L. Gbagbo having been proclaimed president of the Republic of Côte d'Ivoire in a democratic manner and (ii) infringe the Charter of the United Nations, of which the European Union promotes the observance, the defendant having disregarded the principle of non-interference in a State's internal affairs.
3. Third plea in law alleging an infringement of Article 215(3) TFEU, the contested acts not containing any legal safeguard.
4. Fourth plea in law alleging an infringement of the Charter of Fundamental Rights of the European Union,
 - in that the rights of the defence of the applicant have been infringed, in so far as the defendant has not notified him of the evidence held against him, thereby not allowing the applicant duly to present his point of view in that regard, and
 - in that there has been an infringement of the right to property of the applicant to a disproportionate extent.

Action brought on 2 March 2011 — *Gbagbo v Council*

(Case T-119/11)

(2011/C 130/31)

Language of the case: French

Parties

Applicant: Simone Gbagbo (Abidjan, Côte d'Ivoire) (represented by: J. -C. Tchikaya, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- annul Council Decision 2011/18/CFSP of 14 January 2011 amending Council Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire, and Council Regulation (EU) No 25/2011 of 14 January 2011 amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire, to the extent that they concern the applicant;
- order the Council to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments raised by the applicant are, in essence, identical or similar to those raised in Case T-118/11 *Attey v Council*.