

Pleas in law and main arguments

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

Community trade mark concerned: The word mark 'Fitcoin', for goods and services in classes 16, 25, 28, 35, 36 and 41 — Community trade mark application No 3725298

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

Mark or sign cited in opposition: Community trade mark registration No 109827, of the figurative mark 'coin', for goods and services in classes 16, 25, 28 and 35; Community trade mark registration No 3308401, of the figurative mark 'coin', for goods and services in classes 16, 25, 28 and 35; Community trade mark registration No 3364511, of the figurative mark 'coinyou', for goods and services in classes 16, 35 and 36; Italian trade mark registration No 160126, of the figurative mark 'coin', for goods in class 25; Italian trade mark registration No 253233, of the figurative mark 'coin', for goods in classes 16, 25, 28, 35, 36 and 41; Italian trade mark registration No 240305, of the figurative mark 'coin', for goods and services in classes 16, 25, 35, 36 and 41; Italian trade mark registration No 169548, of the figurative mark 'coin', for goods in classes 16 and 28; Italian trade mark registration No 240286, of the figurative mark 'coin', for goods in class 25; International trade mark registration No R381015, of the figurative mark 'coin', for goods and services in classes 16, 25, 28, 35, 36 and 41; International trade mark registration No R363492, of the figurative mark 'coin', for goods and services in classes 16, 28, 35, 36 and 41; International trade mark registration No 260545, of the figurative mark 'coin', for goods in class 25; International trade mark registration No R299708, of the figurative mark 'coin', for goods and services in classes 35, 36 and 41; International trade mark registration No 299710, of the figurative mark 'coin', for goods in classes 16 and 28; International trade mark registration No R363491, of the figurative mark 'coin', for goods in class 25

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Partially annulled the contested decision and upheld the opposition for goods in classes 28 and 41, and rejected the appeal for the remaining goods and services, therefore, allows the application for goods in classes 16, 25, 28, 35, 36 and 41

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal took account only of one of the possible meanings of the word FIT and found the existence of likelihood of confusion with reference to the main part of the relevant goods and services on the basis of such partial assessment.

Action brought on 30 May 2011 — Régie Networks and NRJ Global v Commission

(Case T-273/11)

(2011/C 226/55)

Language of the case: French

Parties

Applicants: Régie Networks (Lyons, France) and NRJ Global (Paris, France) (represented by: B. Geneste and C. Vannini, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- Annul Commission Decision C(2010) 6483 Final of 29 September 2010 concerning the aid scheme C 4/09 (ex N 679/97) implemented by France to promote radio broadcasting (OJ 2011 L 61, p. 22);
- Order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on six pleas in law.

1. First plea in law, alleging infringement of the principle of *res judicata* by the Court of Justice in its judgment in Case C-333/07 *Régie Networks* [2008] ECR I-10807, in so far as the Commission did not comply with the relevant grounds and the operative part of judgment, by disregarding, in re-examining the compatibility of the aid scheme at issue, the method by which that aid scheme was financed and which the Court had mentioned to it.
2. Second plea in law, alleging an error of law relating to the grounds of the contested decision in so far as the Commission artificially disassociated the unlawful method of financing from the aid scheme concerned, although it had declared in its decision to initiate the *inter partes* procedure of 16 September 2009 that the unlawful nature of the charge has the consequence that that aid scheme in its entirety is essentially and directly unlawful.
3. Third plea in law, alleging infringement of the rules of the Treaty relating to the freedom to provide services in so far as the unlawful nature of the charge financing that aid scheme is established by reason of the fact that the detailed rules for the territorial assessment are contrary to the principle of freedom to provide services. The applicants submit that the partial reimbursement, ordered by the contested decision, cannot in any event alter the nature of the aid scheme in question and retroactively make it consistent with the Treaty.

4. Fourth plea in law, alleging that the contested decision did not provide an adequate statement of reasons in so far as the Commission did not explain in detail how the conditions set out in the decision were capable of rendering the scheme compatible despite the finding that the method of financing was incompatible.
5. Fifth plea in law, alleging infringement of the principle of proportionality in so far as the applicants submit that by choosing to declare the aid scheme compatible by imposing retroactive conditions rather than purely and simply finding it incompatible, while exempting the French Republic from recovering the aid from the beneficiaries, the Commission infringed the principle of proportionality.
6. Sixth plea in law alleging abuse of process and infringement of Article 7 of Regulation (EC) No 659/1999 in so far as the Commission, at the end of the formal investigation procedure, adopted a conditional decision, even though not only had its doubts as regards the compatibility of the aid scheme not been removed but it was also satisfied that the scheme was incompatible. It infringed the provisions of Regulation No 659/1999 and therefore committed an abuse of process.

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Action brought on 10 June 2011 — Buzzi Unicem v Commission

(Case T-297/11)

(2011/C 226/56)

Language of the case: Italian

Parties

Applicant: Buzzi Unicem (Casale Monferrato, Italy) (represented by: C. Osti and A. Prastaro, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the Contested Decision in its entirety for failure to state reasons, or to state adequate reasons, and the consequent breach of the applicant's rights of defence and the principle of due process;
- annul the Contested Decision in its entirety for excess and abuse of powers and for the consequent reversal of the burden of proof;
- annul the Contested Decision, in whole or in part, as being *ultra vires* with respect to the powers conferred on the Commission under Article 18 [of Regulation No 1/2003]; and for breach of the principles of proportionality and due

process, and failure to hear argument on an *inter partes* basis, in breach of the Commission's 'Best Practices';

— in any event, order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging failure to state reasons, or to state adequate reasons; breach of the rights of the defence; and breach of the principle of due process
 - the applicant objects that the Contested Decision fails to fulfil the Commission's duty to state reasons and entails breach of the applicant's rights of defence in that it does not provide, or provides in a manner that is wholly inadequate, information regarding the subject and purpose of the investigation.
2. Second plea in law, alleging excess and abuse of powers, and reversal of the burden of proof
 - the applicant claims that the Commission exceeded and abused its powers in that the request for information should be used to verify evidence already in its possession, not for compiling — in the absence of evidence — a comprehensive database on the market. That also amounts to a breach of the presumption of innocence and entails a complete reversal of the burden of proof.
3. Third plea in law, alleging that the Commission acted *ultra vires* with respect to the powers conferred upon it under Article 18 of Regulation No 1/2003
 - the applicant argues that the pattern of requests from the Commission is in excess of the powers conferred under Article 18, in accordance with which the Commission may request only information which is necessary as relating to the facts of which the undertaking can be aware and communicating to it the relevant documents in its possession.
4. Fourth plea in law, alleging breach of the principle of proportionality and that the Commission acted *ultra vires* in relation to Article 18
 - the applicant claims that the Contested Decision exceeds the limits laid down in Article 18 concerning necessity and breaches the principle of proportionality in that (i) it requests information which is unnecessary; (ii) it did not choose, from among a number of suitable measures, the course of action which would entail the least inconvenience for the undertaking; and (iii) the requests are excessively burdensome for the applicant.
5. Fifth plea in law, alleging breach of the Commission's 'Best Practices' and the principle of sound administration