

Action brought on 26 July 2011 — Masottina v OHIM — Bodegas Cooperativas de Alicante (CA' MARINA)

(Case T-393/11)

(2011/C 282/68)

Language in which the application was lodged: English

Parties

Applicant: Masottina SpA [Conegliano (TV), Italy] (represented by: N. Schaeffer, lawyer)

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

Other party to the proceedings before the Board of Appeal: Bodegas Cooperativas de Alicante, trading as Coop. V. BOCOPA (Alicante, Spain)

Form of order sought

- Annul and rescind the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 May 2011 in case R 518/2010-1, as well as the decision of the Opposition Division of 2 February 2010
- Decline and reject the action formed by Bodegas Cooperativas de Alicante, Coop. V. BOCOPA, and by which it opposed the registration of the trademark 'CA' MARINA', and admit the application for registration of the Community trademark No 6375216 to which Masottina SpA shall be entitled; and
- Sentence Bodegas Cooperativas de Alicante, Coop. V. BOCOPA, to payment of all court and related costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'CA' MARINA', for goods in class 33 — Community trade mark application No 6375216

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 1796374 of the word mark 'MARINA ALTA', for goods in class 33

Decision of the Opposition Division: Rejected the CTM application for all the goods

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94, as the Board of Appeal erroneously applied the above mentioned Article: (i) as regards the absence or at least an insufficient determination and distinction of the trademark 'MARINA ALTA'; (ii) as there is no existence of any risk of confusion in respect of the concerned signs; and (iii) regarding the lacking consideration that there does not exist any identity of the merchandises, their respective channels of distribution and the public of reference.

Action brought on 26 July 2011 — Elti v Delegation of the European Union to Montenegro

(Case T-395/11)

(2011/C 282/69)

Language of the case: English

Parties

Applicant: Elti d.o.o. (Gornja Radgona, Republic of Slovenia) (represented by: N. Zidar Klemenčič, lawyer)

Defendant: European Union, represented by the Delegation of the European Union to Montenegro

Form of order sought

- Declare the defendant in violation of Article 2 and 30(3) of Directive 2004/18/EC⁽¹⁾;
- Annul the negotiation procedure conducted in the framework of the tender procedure 'Support to the Digitalisation of the Montenegrin Public Broadcasting — Supply of equipment, Montenegro' (reference EuropaAid/129435/C/SUP/ME-NP) (OJ 2010/S 178-270613), since the applicant had not been given an equal treatment and, as a result, it had not been able to correct/explain its tender;
- Annul the contract award decision in the above mentioned tender procedure;
- In the event the contract had already been concluded, to declare such contract null and void;
- In the alternative, if the contract had already been carried out when the Court gives judgment, or the decision can no longer be declared void, declare the defendant in violation of Article 2 and 30(3) of Directive 2004/18/EC and order defendant to pay the applicant damages of EUR 172 541,56 as compensation for the loss suffered by the applicant in regard to that procedure; and
- Order the defendant to pay the applicant's costs, including the costs of any intervening party.