

Form of order sought

- Declare that, by failing to take a decision in the safeguard clause procedure in progress since 1997 concerning the inhaler Broncho Air® and the effecto® and by not initiating a safeguard procedure pursuant to Article 8 of Directive 93/42/EEC following an order by Germany prohibiting distribution of the effecto®, the European Union, represented by the Commission, has failed to comply with its obligations under Directive 93/42/EEC and under general Community law and has thereby caused the applicant direct damage;
- Order the applicant to pay damages of an amount still to be calculated in respect of the damage caused to it by the European Union, represented by the Commission;
- Order the European Union, represented by the Commission, to pay the costs of the proceedings and the applicant's expenses.

Pleas in law and main arguments

The applicant claims compensation for the damage suffered by him as a result of the alleged failure by the Commission to take action in the safeguard clause procedure pursuant to Article 8 of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices.⁽¹⁾ The applicant developed an inhalation aid for asthma sufferers and persons suffering from COPD [chronic obstructive pulmonary disease], which in the view of the German authorities did not fulfil the basic requirements of Directive 93/42/EEC, because the applicant had in particular omitted to provide sufficient clinical data concerning the lack of danger presented by the inhaler. The applicant claims that the safeguard clause procedure opened by the Commission in 1997 pursuant to Article 8 of Council Directive 93/42/EEC in order to resolve that issue, following the first banning of the inhaler, was never concluded. Following the second ban in 2005 the Commission did not initiate another safeguard clause procedure, considering that the matter fell under Article 18 of Directive 93/42/EEC.

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

1. First plea in law, alleging that the Commission failed to act insofar as it did not conclude the safeguard clause procedure initiated in 1997 and failed to initiate the stated safeguard clause procedure following the banning of the effecto® in 2005.

Owing to the lack of clarity of the legal situation in the absence of a decision by the Commission, the applicant and/or atmed AG, of whose board the applicant is the chairman, have been burdened with unnecessary costs in relation to legal proceedings and patents.

2. Second plea in law, complaining that the Commission failed to reach a positive conclusion in the safeguard clause procedure, having decided that the banning orders of the German authorities were unjustified.

The inhaler Broncho Air® and the effecto® are not dangerous; the burden of proof with regard to the dangerousness of the product rests however with the Member State, given the presumption of conformity of the medical device in question which bears the EC marking. The usefulness of the inhaler Broncho Air® and the effecto® have moreover been clearly established on the basis of the submission of sufficient clinical data. In the absence of a positive decision by the Commission, atmed AG — and therefore the applicant — have suffered substantial loss of revenue, leading to insolvency, and to a lapse of the patents and the exclusive marketing right.

3. Third plea in law, alleging that the applicant lacks sufficient information concerning the required documentation supposed to be forwarded, because the clinical data to be submitted were never clearly described.

⁽¹⁾ Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (OJ 1993 L 169, p. 1), in the version as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ 1993 L 284, p. 1).

Action brought on 20 September 2011 — Rouse Industry v Commission

(Case T-489/11)

(2011/C 347/66)

Language of the case: Bulgarian

Parties

Applicant: Rouse Industry (Rouse, Bulgaria) (represented by: A. Angelov and S. Panov, lawyers)

Defendant: European Commission

Re

Application for annulment of Articles 2, 3, 4 and 5 of the Commission decision of 13 July 2011 concerning State aid C 12/2010 and N 389/2009 granted by Bulgaria to Rouse Industry

Form of order sought

- Annul Articles 2, 3, 4 and 5 of the Commission decision of 13 July 2011 concerning State aid C 12/2010 and N 389/2009 granted by Bulgaria to Rouse Industry;
- Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 107(1) TFEU, insofar as according to that provision what the Commission regards as a failure by the State to take the steps necessary to recover the amounts owed to it is neither new State aid within the meaning of Article 1(c) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty,⁽¹⁾ nor an alteration to existing aid. The applicant also claims that there is no increase in the State's overall financial burden; and even if that were the case, it would also not be a basis on which to regard the facts at issue as new aid.
2. Second plea in law, alleging the infringement of the third ground referred to in Article 263(2) TFEU, insofar as the Commission, without adducing any proof and without providing reasons, incorrectly assumed that the fact that the State has not reclaimed the amounts owed constitutes an anti-competitive advantage for the company and is therefore incompatible with the internal market.
3. Third plea in law, alleging a procedural error because the Commission's decision does not contain the reasons which led to the drafting of its conclusions.
4. Fourth plea in law, alleging infringement of Article 14 of Regulation (EC) No 659/1999, because the contested decision does not indicate either the level of the amount to be reclaimed from the applicant or the corresponding interest at a reasonable rate determined by the Commission.

⁽¹⁾ OJ 1999 L 83, p. 1.

Action brought on 19 September 2011 — Streng v OHIM — Gismondi (PARAMETRICA)

(Case T-495/11)

(2011/C 347/67)

Language in which the application was lodged: English

Parties

Applicant: Michael Streng (Erding, Germany) (represented by: A. Pappert, lawyer)

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

Other party to the proceedings before the Board of Appeal: Fulvio Gismondi (Roma, Italy)

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 19 July 2011 in case R 1348/2010-4, and refer the case back to the Fourth Board of Appeal; and
- Order the defendant to pay the costs.

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 'PARAMETRICA', for services in classes 36 and 42 — Community trade mark application No 6048433

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

Mark or sign cited in opposition: German trade mark registration No 30311096 of the word mark 'parameta', for services in classes 35, 38, 41 and 42

Decision of the Opposition Division: Upheld the opposition in its entirety

Decision of the Board of Appeal: Annulled the decision of the Opposition Division and rejected the opposition

Pleas in law: Infringement of Rules 19(2) and (3) in connection with Rule 98(1) of Commission Regulation (EC) No 2868/95, as the Board of Appeal wrongly considered that the submitted documents containing WIPO INID codes are not in the language of the proceedings and/or taken together with the translation provided in the writ of 3 November 2008, do not constitute 'translation' within the meaning of Rule 98(1) CTMIR.

Action brought on 16 September 2011 — Evropaïki Dynamiki v Commission

(Case T-498/11)

(2011/C 347/68)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systemata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis and M. Dermizakis, lawyers)

Defendant: European Commission

Form of order sought

- Annul the decision of the Publications Office of the European Union rejecting the offer submitted by the applicant in the tendering procedure-Invitation to specific tender no. 10369 'Revamping of the OLAF website' implementing Competitive Multiple Framework Service