

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 January 2012 in case R 2258/2010-1;
- Order the defendant to bear its own costs as well as the costs of the applicant;
- Order the other party to the proceedings before the Board of Appeal to bear its own costs, in the event it intervenes before the General Court.

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 figurative mark 'Be Light', for goods in classes 29, 30 and 32 — Community trade mark application No 7165351

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

Mark or sign cited in opposition: Community trade mark registration No 135285 of the word mark 'BECK's', for goods in class 32

Decision of the Opposition Division: Upheld the opposition for all the contested goods in class 32 and allowed the contested trade mark to proceed for the remaining goods

Decision of the Board of Appeal: Annulled the decision of the Opposition Division

Pleas in law: Infringement of Articles 8(1)(b) and 8(5) of Council Regulation No 207/2009.

Action lodged on 30 April 2012 — Breyer v Commission

(Case T-188/12)

(2012/C 194/41)

Language of the proceedings: German

Parties

Applicant: Patrick Breyer (Wald-Michelbach, Germany) (represented by: M. Starostik, lawyer)

Defendant: European Commission

Form of order sought by the applicant

- Annul the Decision of the Commission of 16 March 2012 on Az. Ares(2012)313186;

- Annul the Decision of the Commission of 3 April 2012 on Az. Ares(2012)399467 in so far as access to the written submissions of Austria in proceedings C-189/09 has not been granted;

- Order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant claims with regard to the Decision of the Commission of 16 March 2012:

1. First plea in law, alleging incorrect application of the second indent of Article 4(2) of Regulation (EC) No 1049/2001⁽¹⁾ (protection of legal advice)

- According to the applicant, it does not adversely affect the protection of legal advice to publish legal opinion Ares(2010) 828204 of the Commission's legal service, which discusses the question of whether Directive 2006/24/EC⁽²⁾ can be amended so that it is left to Member States of the European Union whether or not to 'retain' telecommunications data of all citizens without suspicion and cause for a hypothetical case of need.

- In any case, the public interest outweighs the knowledge of the opinion.

2. Second plea in law, alleging incorrect application of Article 4(3) first sub paragraph of Regulation No 1049/2001 (protection of the decision-making process)

- According to the applicant, it does not adversely affect the protection of the decision-making process of the Commission to publish the legal opinion mentioned above of the Commission's legal service.

- In any case, the public interest outweighs the knowledge of the opinion.

In support of the action, with regard to the Decision of the Commission of 3 April 2012, the applicant pleads the incorrect application of Article 2(3) of Regulation No 1049/2001. In that regard, the applicant claims that, contrary to the view of the Commission, the written submissions of a Member State (here: Austria) to the European Court of Justice (here: in proceedings C-189/09), copies of which the Commission received as a party to the proceedings, are subject to the scope of application of Regulation No 1049/2001.

⁽¹⁾ 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).

⁽²⁾ Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54).