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

Decision of the Board of Appeal: Deemed the appeal not to have been filed

Pleas in law: Infringement of Articles 8(3)(a)(ii) and (b) and 8(4) of Commission Regulation (EC) No 2869/95 of 13 December 1995 on the fees payable to the Office for Harmonisation in the Internal Market (Trade Marks and Designs).

Action brought on 1 June 2012 — Amitié v Commission

(Case T-234/12)

(2012/C 243/40)

Language of the case: English

Parties

Applicant: Amitié Srl (Bologna, Italy) (represented by: D. Bogaert and M. Picat, lawyers)

Defendant: European Union, represented by the European Commission

Form of order sought

— Declare that the following debit notes sent by the Commission are not due:

  — 50 458,23 EUR in the framework of the MINERVAPLUS Agreement concluded between the applicant and the Commission;

  — 358 712,35 EUR in the framework of the MICHAEL Agreement concluded between the applicant and the Commission.

— Declare that the recovery request of the total amount of 1 083 616,89 EUR is not grounded;

— Recognize that the Commission could not on 11 June 2011 impose to the applicant an extrapolation procedure in the framework of the BSOLE Agreement;

— State that the extrapolation procedure is therefore not grounded under Belgian Law;

— Declare that the Commission is not entitled to apply an extrapolation process to BSOLE Agreement since 14 January 2010;

— Proclaim the unilateral freezing of the payments of the Community Financial Contributions for ATHENA and JUDAICA Agreements as not grounded under Luxemburg Law;

— Order the immediate unfreezing of the Community Financial Contributions, *i.e.* the amount of amount of 263 120 EUR blocked since 8 February 2010 for JUDAICA and since 14 June 2010 for ATHENA;

— Order the immediate payment as from the date when the judgment is rendered by way of wire transfer on:

  — The bank account of the project coordinator, according to Article 6.2 of the JUDAICA Grant Agreement;

  — The bank account of the project coordinator, according to Article 6.2 of the ATHENA Grant Agreement;

— Condemn the Commission to the payment of the amount of:

  — 150 000 EUR corresponding to the compensation of the counsels and Italian auditor fees (provisional); and

  — 256 824,17 EUR corresponding to the compensation of the damages caused by the ungrounded or abusive unilateral freezing of the payments in the framework of ATHENA and JUDAICA Agreements by the European Commission.

— Condemn the Commission to reimburse to the applicant any and all costs and expenses incurred by it in the framework of the present proceeding to the extent that the disloyal behaviour of the Commission is the sole cause of the dispute at hand. Taking into account the nature and characteristics of the dispute, the costs are provisionally estimated at EUR 50 000; and

— Declare the forthcoming judgment as enforceable notwithstanding that it may be appealed.

In subsidiary order, assuming that the applicant is liable to pay a certain amount under the Commission's Audit *quod non*, the applicant requests the General Court:

— To declare that the applicant is only liable for an amount of 54 195,05 EUR and not 1 083 616,89 EUR under the Belgian and Luxemburg case-law relating to the sanction of the abusive behaviour of the Commission which is the reduction of such right to a normal use, *i.e.* an amount of 54 195,05 EUR and not 1 083 616,89 EUR; and

— To declare the forthcoming judgment as enforceable notwithstanding that it may be appealed.

Pleas in law and main arguments

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

1. First plea in law, contesting the findings of the Commission's audit, as:

   — The findings of the Commission's audit is contested based upon the report of an external and independent auditor, explicitly appointed by the applicant for this specific issue and for the assessment of the findings of the Commission's audit; and

   — Subsidiary, it is alleged that there was abusive behaviour on the part of the Commission, thereby infringing the principle of good faith (Article 1134 of the Belgian and Luxembourg Civil Codes).

2. Second plea in law, contesting the application of the extrapolation process to the BSOLE Agreement, as:

   — The Commission breached Article 17 of the General Conditions for eTEN Feasibility/Market Validation Contracts;

   — The Commission breached Article 4.2.2.3. of the Guide Financial Issues relating to the Indirect Actions of the Sixth Framework Programmes of October 2003 and February 2005;

   — There was breach of contract by the Commission (Article 1134 §1 of Belgian Civil Code); and

   — The Commission breached the limitation period for proceeding under the European Law (see under Article 46 (*ex* Article 43) of the Protocol on the Statute of the Court of Justice of the European Union.

3. Third plea in law, alleging the unjustified freezing of the payments made in the framework of ATHENA and JUDAICA Agreements, part of the eCONTENTPLUS project, as:

   — The freezing is not grounded on the basis of the contractual provisions of the ATHENA and JUDAICA Agreements;

   — The freezing could not be justified under Articles 106.4 and 183 of the Commission Regulation No 2342/2002 [1];

   — Article 183 of the Commission Regulation No 2342/2002 is also not applicable;

   — It is alleged that there was abusive behaviour on the part of the Commission regarding the unilateral and unjustified freezing of the payment of the Community Financial Contributions under Article 1134 of Civil Code; and

   — The principle of '*exceptio non adimpleti contractus*' is also not applicable.

[1] Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1)

Action brought on 29 May 2012 — CEDC International v OHIM — Underberg (Shape of a blade of grass in a bottle)

(Case T-235/12)

(2012/C 243/41)

Language in which the application was lodged: English

Parties

Applicant: CEDC International sp. z o.o. (Warsaw, Poland) (represented by: M. Siciarek, lawyer)

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

Other party to the proceedings before the Board of Appeal: Underberg AG (Dietlikon, Suisse)

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 26 March 2012 in case R 2506/2010-4;

— Order OHIM to bear the costs of the proceedings at hand.

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 with the description 'the object of the trade mark is a greeny-brown blade of grass in a bottle, the length of the blade of grass is approximately three-quarters the height of the bottle', for goods in class 33 — Community trade mark application No 33266

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

Mark or sign cited in opposition: French trade mark registration No 95588457 of the three-dimensional mark representing a bottle with a strand of grass for goods in class 33; German trade mark registration No 39848553; Polish trade mark registration No 62018; Polish trade mark registration No 62081 for goods in class 33; Polish trade mark registration No 85811 for goods in class 33; Japanese trade mark registration No 2092826 for goods in class 28; French trade mark registration No 98746752 of the three-dimensional mark representing a bottle with a strand of grass for goods in class 33; Non-registered trade mark used in the course of trade in Germany in connection with 'vodka'