

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 2 August 2012 in case R 1943/2011-2; and
- Order the defendant to bear the costs of the proceedings.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'SEDONA FRAMEWORK', for goods in class 9 — Community trade mark application No 9067372

*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:* International trade mark registration No 934023 of the figurative mark '~sedna', for goods in class 9

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

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 207/2009.

**Action brought on 29 October 2012 — Meta Group v Commission**

(Case T-471/12)

(2013/C 9/71)

*Language of the case:* Italian

**Parties**

*Applicant:* Meta Group Srl (Rome, Italy) (represented by: A. Bartolini, V. Coltelli and A. Formica, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- Annul Note No 939970 of the D.G. Enterprise and Industry of the European Commission of 2 August 2012, received by the applicant on 20 August 2012 and signed by the Director of the 'Industrial Innovation and Mobility Indus-

tries' Unit, concerning the 'launch recovery procedure to FP5-FP6 payment contracts No 517557 IRE6 INNOVATION COACH, 517539 IRE6 MARIS, 517548 IRE6 RIS MAZOVIA, 030583 CONNECT-2-IDEAS, 039982 EASY, 014660 RIS MALOPOLSKA, 517529 IINNSOM, 014637 RIS TRNAVA and 014668 RIS WS' signed by the Director Dr Carlo Pettinelli, by which the Commission's decision 'to recover the amount of EUR 345 451.03 under the above agreement' was communicated.

— And, in so far as necessary:

- Annul Note No 660283 of the D. G. Enterprise and Industry of the European Commission of 1 June 2012 signed by the Director of the 'Industrial Innovation and Mobility Industries' Unit and concerning the same matter, which is also contested as an internal measure relating to the recovery procedure which concluded with the adoption of the provision referred to in the above paragraph.

— Annul the Note of 27 September 2012 concerning the recovery of the amount claimed by setting this off against amounts in the applicant's credit balance in connection with the projects which had received grant funding.

— Annul the Note of 27 September 2012 concerning the recovery of the amount claimed by setting this off against amounts in the applicant's credit balance.

— Annul the Budget Execution (general budget and EDF) Note of the European Commission of 10 October 2012, by which the applicant was notified of the setting off against further amounts in its credit balance, amounting in total to EUR 294 290.59.

— Annul all previous and subsequent measures, whether related or subordinate.

— Accordingly:

— Order the Commission to pay the sum of EUR 294 290,59, together with the sum of EUR 54 705,97, and compensation in respect of the resulting loss.

**Pleas in law and main arguments**

The present action concerns the grant agreements concluded by the applicant and the Commission in the context of the 'Fifth and Sixth Framework Programmes for Research and Technological Development of the European Union'.

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

1. First plea in law, alleging breach of Article 1.1 of the grant agreement, breach of the principle of reasonableness and manifest error in the assessment of the facts.

- It is submitted in this regard that the applicant has provided evidence that the remuneration of its own worker members is fully in line with market values and with the remuneration received by self-employed ‘parasubordinate’ workers and employees pursuing similar activities. Iner alia, the employment on the basis of ‘continuous and coordinated contractual relationships’ of international experts engaged in activities connected with the projects in question is perfectly legitimate.
2. Second plea in law, alleging breach of the principle that administrative action should be proportionate and breach of the principles of sound administration, transparency and that criteria must be determined in advance.
- It is submitted in this regard that the existence of a multiplicity of criteria which may be used for the purpose of determining the methods of calculating remuneration should have led the administration to adopt the criterion most favourable to private individuals. Once it was realised that there is considerable variation among the rates paid on the Italian and European markets for the same services, the appropriate course of conduct for the administration would have been to adopt a solution liable to cause the least detriment possible.
3. Third plea in law, alleging breach of the principle that administrative action should be reasonable, on the grounds of manifest contradiction and unequal treatment.
- It is submitted in this regard that while the justification given in the contested measure for the recovery is that the method used for calculating eligible costs and remuneration is unlawful, that measure is clearly at variance with decisions previously adopted by the Commission, since the very same methodology which is the subject of complaint here has been also been viewed in a positive light by that institution.
4. Fourth plea in law, alleging breach of the principle of legitimate expectations, the principle of good faith and the principles of the protection of acquired rights and legal certainty and breach of the duty of care.
- It is submitted in this regard that the Commission’s conduct has given rise to a legitimate expectation on the part of the applicant, in so far as the administration’s decision that the grant agreement relating to the ECOLINK + project was to be concluded ‘in accordance with the solution elaborated to the noteworthy findings of a recent audit report’ [sic] and the decision to provide in the subsequent amendment to that agreement that, as regards the Shareholders, it was necessary to use ‘the methodology annexed to the contract and the relative costs are reported in the company’s books’ [sic] show that it may be inferred that the Commission had in fact, by that stage, indicated its acceptance of the methods of calculating costs proposed by META.

5. Fifth plea in law, alleging insufficient reasoning, breach of the rule that the parties should be heard, the principle of sound administration, breach of the procedures laid down by the grant agreements and of the Code of proper administrative conduct.

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**Action brought on 31 October 2012 — Giorgis v OHIM — Comigel (Shape of goblets)**

**(Case T-474/12)**

(2013/C 9/72)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Giorgio Giorgis (Milan, Italy) (represented by: I. Prado and A. Tornato, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Comigel SAS (Saint-Julien-lès-Metz, France)

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 July 2012 in case R 1301/2011-1; and
- Order OHIM to pay the costs

**Pleas in law and main arguments**

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* The three-dimensional mark representing a shape of goblets, for goods in class 30 — Community trade mark registration No 8132681

*Proprietor of the Community trade mark:* The applicant

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

*Grounds for the application for a declaration of invalidity:* The request for a declaration of invalidity was based on grounds for refusal pursuant to Article 52(1)(a) in conjunction with Articles 7(1)(b) and (d) of Council Regulation No 207/2009

*Decision of the Cancellation Division:* Declared the contested CTM invalid

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Articles 7(1)(b) and 7(3) of Council Regulation No 207/2009.

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