

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission committed errors of law and of fact, and failed to take into account considerations relevant to the scale of possible loss to the EU funds, in respect of the risk to such funds posed by expenditure in claim years 2007 and 2008 in particular resulting from errors in determination of eligible area in 2005 affecting the initial allocation of entitlements.
2. Second plea in law, alleging that the Commission committed errors of law and fact, in that the Commission wrongly concluded that Northern Ireland Department of Agriculture and Rural Development ('DARD') failed to apply, properly or at all, provisions on sanctions, recoveries of undue payments and intentional non compliance, and that the Commission thus overestimated and/or failed to take into account considerations relevant to the scale of possible loss to the EU funds. In particular, the Commission:
 - wrongly criticised an alleged «systematic» recalculation of payment entitlements by DARD;
 - wrongly claimed that errors in 2005 could have material affects on the historical element of the entitlement value;
 - adopted the wrong method of calculation of overpayments;
 - adopted the wrong approach to penalties, in particular by:
 - adopting the wrong method of calculating penalties; and
 - wrongly claiming that a penalty should be imposed for each year in cases where a penalty was applicable in 2005 but not in subsequent claim years in this case in 2007 and 2008 where over-payment resulted from the same error as that penalised in 2005;
 - adopted the wrong approach to intentional non-compliance.

Action brought on 19 November 2012 — Murnauer Markenvertrieb v OHIM (NOTFALL CREME)

(Case T-504/12)

(2013/C 26/124)

Language of the case: German

Parties

Applicant: Murnauer Markenvertrieb GmbH (Trebur, Germany) (represented by F. Traub and H. Daniel, lawyers)

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

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 September 2012 in Case R 271/2012-4;
- Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the figurative mark, including the word element 'NOTFALL CREME' for goods in Classes 3 and 5 — Community trade mark application No 10 107 134

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Article 7(1)(b) and (c) and Article 83 of Regulation No 207/2009

Action brought on 19 November 2012 — Compagnie des montres Longines, Francillon v OHIM — Cheng (B)

(Case T-505/12)

(2013/C 26/125)

Language in which the application was lodged: English

Parties

Applicant: Compagnie des montres Longines, Francillon SA (Saint-Imier, Switzerland) (represented by: P. González-Bueno Catalán de Ocón, lawyer)

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

Other party to the proceedings before the Board of Appeal: Xiuxiu Cheng (Budapest, Hungary)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 September 2012 in case R 193/2012-5; and
- Order the Defendant and the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings.