

- Alternatively, annul the said decision of 26 April 2012 in so far as it applies to the period 1 January 2007 to 31 December 2009;
- Order the Commission to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a material error of law

In relation to the first plea, stating that the Commission committed a material error of law in relation to the scope of Article 107(1) TFEU, ALRO will demonstrate that the Commission has failed to apply properly the requirements relating to imputability, as set out in Case C-482/99, *France v Commission* [2002] ECR I-4397 ('the *Stardust Marine* judgment'). In particular, the Commission has sought to base its analysis solely on 'organic' indicators. However, ALRO will demonstrate that the requirements set out in the *Stardust Marine* judgment also require the Commission to demonstrate the existence of other substantive indicators because 'organic' indicators in isolation are insufficient to establish imputability.

2. Second plea in law, alleging a manifest error of assessment

In relation to the second plea in law, stating that the Commission committed manifest errors of assessment in reaching the conclusion that Hidroelectrica's actions were imputable to the Romanian State, ALRO will demonstrate that the Commission has failed to analyse correctly the governance structure of Hidroelectrica and the impact that this structure has on the decision-making process of this organisation. Secondly, ALRO will outline why the Commission was wrong to compare the ALRO contract to the agreement between Hidroelectrica and ArcelorMittal. Thirdly, it will demonstrate why the Ministerial Order No 445/2009 is not relevant to the Commission's analysis and why its references to press reports in 2010 are insufficient to meet the evidentiary threshold necessary to demonstrate imputability.

3. Third plea in law, alleging an inadequate statement of reasons

In relation to the third plea in law, ALRO will demonstrate that for the points relied on by the Commission (as outlined in the paragraph above), it has failed to provide an adequate statement of reasons, and has therefore acted contrary to the requirements of Article 296 TFEU. Such a statement of reasons is necessary to allow the General Court to review the legality of the decision and to provide the parties concerned with the information necessary to enable them

to ascertain whether or not the decision is well-founded. As indicated in more detail in this application, the contested decision fails to satisfy this requirement.

⁽¹⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, p. 1)

Action brought on 27 November 2012 — Spirlea v Commission

(Case T-518/12)

(2013/C 32/33)

Language of the case: German

Parties

Applicants: Darius Nicolai Spirlea (Capezzano Pianore, Italy) and Mihaela Spirlea (Capezzano Pianore) (represented by: V. Foerster and T. Pahl, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

- accept the present application made on the basis of Article 263 TFEU;
- declare the action admissible;
- declare the action to be founded and, accordingly, that the defendant committed significant procedural errors and made other substantive errors of law;
- on that basis, annul the Commission's decision of 27 September 2012 to bring an end to EU pilot procedure No 2070/11/SNCO (Ref. Ares [2012] 1135073);
- order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on three pleas in law.

1. First plea in law: setting up an EU pilot procedure without any legal basis (Articles 290 and 291 TFEU)

- In the context of this plea, the applicants submit that the launching of an EU pilot procedure amounts to an additional procedural requirement to Article 258 TFEU. This procedural requirement — for which the Commission does not have any power or delegated power under the Treaties — has been used contrary to the rule of law and in a non-transparent procedure which, moreover, undermines the procedure for failure to fulfil obligations laid down in Article 258 TFEU.

2. Second plea in law: infringement of the Commission communication of 20 March 2002 to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law. ⁽¹⁾

— In this regard, the applicants submit that the Commission arbitrarily bypassed its communication on relations with the complainant in respect of infringements of Community law and, without offering any alternative, transferred the applicants' complaints to the EU pilot procedure, the rules of which are not accessible to the applicants.

3. Third plea in law: infringement of the duty to state reasons

— In this context, they complain that the Commission's grounds do not contain any clarification of the facts in relation to the application of Regulation (EC) No 1394/2007 ⁽²⁾ and do not address the specific legal complaints made by the applicants in connection with EU law.

⁽¹⁾ OJ 2002 C 244, p. 5.

⁽²⁾ Regulation (EC) No 1394/2007 of the European Parliament and of the Council of 13 November 2007 on advanced therapy medicinal products and amending Directive 2001/83/EC and Regulation (EC) No 726/2004 (OJ 2007 L 324, p. 121).

Action brought on 27 November 2012 — Pågen Trademark v OHIM (giffjar)

(Case T-520/12)

(2013/C 32/34)

Language of the case: Swedish

Parties

Applicant: Pågen Trademark AB (Malmö, Sweden) (represented by J. Norderyd, lawyer)

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

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 27 September 2012 ⁽¹⁾ in Case R 46/2012-2 and declare that Community trade mark No 1 009 0331 GIFFLAR (fig) applied for by Pågen Trademark AB is to be published and registered, or, in the alternative, order OHIM to publish and register the trade mark;

— Order the defendant to pay the applicant's costs.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark containing the word element 'giffjar' for goods in Classes 29, 30 and 31 — application for registration of Community trade mark No 1 009 0331

Decision of the Examiner: Rejection in part of the application for registration

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law:

— Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009

— Infringement of Article 7(3) of Regulation No 207/2009

⁽¹⁾ Translator's note: The correct date of the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in Case R 46/2012-2 is 18 September 2012 as stated in the OHIM database.

Action brought on 30 November 2012 — Alfa-Beta Vassilopoulos v OHIM — Henkel (AB terra Leaf)

(Case T-522/12)

(2013/C 32/35)

Language in which the application was lodged: English

Parties

Applicant: Alfa-Beta Vassilopoulos SA (Gerakas Attikis, Greece) (represented by: N. Lymperis, lawyer)

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

Other party to the proceedings before the Board of Appeal: Henkel AG & Co. KGaA (Düsseldorf, Germany)

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 1 October 2012 in case R 2122/2011-4 and the appeal be upheld so that CTM application AB TERRA LEAF (& device) No 8573651 proceeds to registration for all goods applied for; and

— Order the defendant and the opponent to pay the costs of these proceedings, including those incurred in opposition and appeal proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'AB terra Leaf' in black and white, for goods in classes 3, 5 and 16 — Community trade mark application No 8573651