

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

Other party to the proceedings before the Board of Appeal: Fontana Food AB (Tyresö, Sweden)

Form of order sought

The applicant claims that the Court should:

- Annul the First Board of Appeal's decision of 1 March 2013 in Case R 2604/2011-1;
- Annul the Cancellation Division's decision of 21 October 2011 No 4892 C, which preceded the adoption of the contested decision;
- Order the Office to pay the costs, including those incurred in the appeal proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark containing the word elements 'Taverna MEDITERRANEAN WHITE CHEESE'
— Community trade mark registration No 3 600 285

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 grounds of the request for a declaration of invalidity were those laid down in Articles 53(1)(a) and 8(1)(b) of Council Regulation No 207/2009

Decision of the Cancellation Division: Declared the contested Community trade mark partially invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 53(1)(a) in conjunction with 8(1)(b) of Council Regulation No 207/2009.

Action brought on 4 June 2013 — Miettinen v Council

(Case T-303/13)

(2013/C 215/26)

Language of the case: English

Parties

Applicant: Samuli Miettinen (Espoo, Finland) (represented by: O. Brouwer, E. Raedts, lawyers, and A. Villette, Solicitor)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Council of 21 March 2013 refusing to grant full access to document 15309/12 pursuant to 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), as communicated to the applicant on 25 March 2013 in a letter bearing the reference '04/c/01/13' (the Contested Decision); and
- Order the Council to pay the applicant's costs pursuant to Article 87 of the Rules of Procedure of the General Court, including the costs of any intervening parties.

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 breach of Article 4(2) second indent and Article 4(3) first subparagraph of Regulation (EC) No 1049/2001, since the Contested Decision is based on a wrong interpretation and application of such provisions, which relate to the protection of court proceedings and legal advice and to the protection of the ongoing decision-making process respectively, as:

- Firstly, the Council failed to demonstrate that disclosure of document 15309/12 prejudices its legal service's ability to defend it in future legal proceedings, and undermines the legislative process;

- Secondly, the Council failed to demonstrate that document 15309/12 is particularly sensitive and/or of a wide scope justifying the setting aside of the presumption favouring disclosure of legal opinions in the legislative context;

- Thirdly, the Council's theory of harm is purely hypothetical. It is factually, as well as legally, unfounded considering that the content of the advice contained in document 15309/12, a consensus among Member States which in line with the legal service's analysis, was public when the Contested Decision was taken; and

- Fourthly, the Council misapplied the overriding public interest test when invoking Article 4(3) first subparagraph when it considered only the perceived risks to its decision-making process associated to disclosure and not the positive effects of such disclosure, inter alia, for the legitimacy of the decision-making process and failed to apply the test at all when invoking Article 4(2) second indent.
- 2. Second plea in law, alleging breach of the obligation to state adequate reasons under Article 296 TFEU, as the Council did not fulfill its obligation to state sufficient and adequate reasons for the Contested Decision.

Action brought on 13 June 2013 — DelSolar (Wujiang) v Commission

(Case T-320/13)

(2013/C 215/27)

Language of the case: English

Parties

Applicant: DelSolar (Wujiang) Ltd (Wujiang City, China) (represented by: L. Catrain González, lawyer, E. Wright and H. Zhu, Barristers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- Annul Commission Regulation (EU) No 513/2013 ⁽¹⁾, in so far as it applies to the applicant;
- Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the European Commission has made a manifest error of law by amplifying the scope of third indent of Article 2(7)(c) of the Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51) (the 'Basic Regulation') and reviewing alleged significant distortions which, because they have not been carried over from the former non-market economy system, they clearly fell outside the scope of the third indent of Article 2(7)(c) of the Basic Regulation
2. Second plea in law, alleging that the the European Commission has wrongly concluded that the production costs and overall financial situation of the applicant were subject to significant distortions carried over from the former non-market economy system as provided in the third indent of the Basic Regulation.
3. Third plea in law, alleging that the European Commission has made an error of assessment in light of the fact that neither the negligible subsidies received nor the preferential tax regime received by the applicant and its affiliate Delta Greentech (China) Co. Ltd. (jointly referred as 'DelSolar Group') were 'carried over from the former non-market economy system'.
4. Fourth plea in law, alleging that the decision of the European Commission to reject the applicant's market economy treatment ('MET') request on the sole basis of a preferential tax regime and negligible subsidies is disproportionate and unnecessary.

⁽¹⁾ Commission Regulation (EU) No 513/2013 of 4 June 2013 imposing a provisional anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China and amending Regulation (EU) No 182/2013 making these imports originating in or consigned from the People's Republic of China subject to registration (OJ 2013 L 152, p. 5)