

*Trade mark at issue:* EU figurative mark containing the word element 'h' — Application for registration No 12 833 141

*Procedure before EUIPO:* Opposition proceedings

*Contested decision:* Decision of the Second Board of Appeal of EUIPO of 24 October 2016 in Case R 53/2016-2

### **Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

### **Pleas in law**

- Infringement of Articles 8(1)(b) and 41 of Regulation No 207/2009;
- Infringement of the legal principles to be considered when applying and interpreting the Regulation No 207/2009;
- Infringement of Article 135(4) of the Rules of procedure.

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## **Action brought on 27 January 2017 — Poland v Commission**

**(Case T-51/17)**

(2017/C 086/41)

*Language of the case: Polish*

### **Parties**

*Applicant:* Republic of Poland (represented by: B. Majczyna, acting as Agent)

*Defendant:* European Commission

### **Form of order sought**

The applicant claims that the Court should:

- annul Commission Implementing Decision (EU) 2016/2018 of 15 November 2016 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (notified under document C(2016) 7232 (OJ 2016 L 312, p. 26), in so far as it excludes from European Union financing the sums of EUR 38 984 850,50 and EUR 76 816 098,12 paid by the paying agency accredited by the Republic of Poland;
- order the European Commission to pay the 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 infringement of Article 52(1) of Regulation (EU) No 1306/2013 <sup>(1)</sup> through the application of a financial correction based on incorrect factual findings and an incorrect interpretation of the law, despite the fact that the expenditure was effected by the Republic of Poland in accordance with the provisions of EU law.

- The amounts excluded from European Union financing under the contested decision were spent in accordance with Regulation (EC) No 1234/2007<sup>(2)</sup> and Commission Implementing Regulation No 543/2011<sup>(3)</sup> and there was therefore no basis for excluding those amounts from that financing.
2. Second plea in law, alleging infringement of Article 52(2) of Regulation (EU) No 1306/2013 through the application of a flat-rate correction which was grossly excessive in relation to the risk of potential financial loss for the European Union budget.
- The flat-rate correction of 25 % applied by the Commission is too high and exceeds the maximum potential loss that could be borne by the Fund. In addition, the applicant makes reference to Guidelines No VI/5330/97 for the calculation of financial consequences and points out that it has fulfilled all of the conditions described in those guidelines necessary for the application by the Commission of a lower rate or for the non-application of the correction.
3. Third plea in law, alleging infringement of Article 52(4)(a) of Regulation (EU) No 1306/2013 by reason of the calculation of a flat-rate correction in relation to expenditure effected more than 24 months before the Commission notified the Member State in writing of its inspection findings.
- Under Article 52(4)(a) of that regulation, financing may not be refused for expenditure which was effected more than 24 months before the Commission notifies the Member State in writing of its inspection findings.

<sup>(1)</sup> Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549).

<sup>(2)</sup> Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ 2007 L 299, p. 1).

<sup>(3)</sup> Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ 2011 L 157, p. 1).

**Action brought on 1 February 2017 — Westbrae Natural v EUIPO — Kaufland Warenhandel  
(COCONUT DREAM)**

**(Case T-65/17)**

(2017/C 086/42)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Westbrae Natural, Inc. (Delaware, United States) (represented by: D. McFarland, Barrister)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Kaufland Warenhandel GmbH & Co. KG (Neckarsulm, Germany)

**Details of the proceedings before EUIPO**

*Applicant:* Applicant

*Trade mark at issue:* EU word mark 'COCONUT DREAM' — Application for registration No 13 599 501

*Procedure before EUIPO:* Opposition proceedings

*Contested decision:* Decision of the Second Board of Appeal of EUIPO of 2 November 2016 in Case R 182/2016-2