

Operative part of the order

1. *There is no longer any need to adjudicate on the present action.*
2. *S.C. Gerovital Cosmetics S.A. and S.C. Farmec S.A. shall each bear their own costs and half of those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

⁽¹⁾ OJ C 183, 4.8.2007.

Action brought on 6 October 2008 — Evropaiki Dynamiki v BEI

(Case T-461/08)

(2009/C 19/57)

Language of the case: English

Parties

Applicant: Evropaiki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athènes, Greece) (represented by: N. Korogiannakis and P. Katsimani, lawyers)

Defendant: European Investment Bank

Form of order sought

- Annul the decision of the European Investment Bank to evaluate the applicant's bid as not successful and award the contract to the successful contractor;
- Order the European Investment Bank to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 1 940 000,00;
- Order the European Investment Bank to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

By means of its application pursuant to Articles 230 EC and 235 EC, the applicant seeks, on one hand, the annulment of the decision of the European Investment Bank of 26 July 2008 to reject the bid of the applicant filed in response to the open Call for Tenders 'EIB-Assistance in the Maintenance Support and Development of the loans front Office system (SERAPIS) at the European Investment Bank' (OJ 2007/S 176-215155), and on the other hand, compensation for damages.

The applicant claims that the outcome of the tender has not been communicated to it and that it came only incidentally to its knowledge that a contract award notice had been published in the Official Journal ⁽¹⁾ of 26 July 2008. The applicant argues that the contested decision was taken by the defendant in violation of the principles of transparency and of equal treatment, and of the relevant provisions of the EIB's Guide for Procurement and the EC law on public procurement. It is submitted moreover that by not notifying the applicant of its award decision, by failing to provide sufficient justification of its decision to award the contract to another tenderer, by setting criteria that result in unequal treatment, by mixing selection and award criteria, by using a discriminatory evaluation formula of a ratio 75 %/25 %, the defendant allegedly failed to ensure undistorted competition through repeated infringements of the obligation of transparency and equal treatment.

The applicant furthermore claims that should the Court find that the defendant infringed the community law of public procurement and/or principles of legal transparency and of equal treatment, the applicant requests monetary compensation equal to 50 % of EUR 3 880 000,00 (EUR 1 940 000,00) from EIB, corresponding to the estimated gross profit from the aforementioned public procurement procedure, should the contract have been awarded to the applicant.

The applicant further requests the Court to condemn the defendant to pay the applicant's legal costs even if the Court rejects the application, in accordance with Article 87(3)(b) of the Rules of Procedure of the Court of First Instance, since it considers that it was the defendant's deficient evaluation of the applicant's tender, as well as the failure to state reasons and inform the applicant timely on the relative merits of the successful tenderer that forced the applicant to seek legal redress before this Court.

⁽¹⁾ OJ 2008/S 144-192307.

Action brought on 11 November 2008 — Giordano Enterprises v OHIM — José Dias Magalhães & Filhos (GIORDANO)

(Case T-483/08)

(2009/C 19/58)

Language in which the application was lodged: English

Parties

Applicant: Giordano Enterprises Ltd (Jalan Merdeka, Malaysia) (represented by: M. Nentwig, lawyer)

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

Other party to the proceedings before the Board of Appeal: José Dias Magalhães & Filhos Lda (Arrifana, Portugal)

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 28 July 2008 in case R 1864/2007-2, as far as it dismissed the appeal of the applicant; and
- Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'GIORDANO' for goods in classes 18 and 25

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: Portuguese trade mark registration No 322 534 of the word mark 'GIORDANO' for goods in class 25

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Annulled the decision of the Opposition Division to the extent that it upheld the opposition for certain goods in class 18 and dismissed the appeal for the remainder

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that there is a likelihood of confusion between the trade marks concerned; Infringement of Article 42 of Council Regulation No 40/94 as well as Rule 15 of Commission Regulation No 2868/95 ⁽¹⁾ as the Board of Appeal wrongly rendered a decision pursuant to Article 8(1)(a) of Council Regulation No 40/94 while the other party to the proceedings before the Board of Appeal based its opposition only on Article 8(1)(b) of Council Regulation 40/94.

⁽¹⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Appeal brought on 13 November 2008 by Paul Lafili against the judgment of the Civil Service Tribunal delivered on 4 September 2008 in Case F-22/07 Lafili v Commission

(Case T-485/08 P)

(2009/C 19/59)

Language of the case: French

Parties

Appellant: Paul Lafili (Genk, Belgium) (represented by: L. Levi, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

The appellant claims the Court should:

- annul the judgment of the Civil Service Tribunal of the European Union of 4 September 2008 in Case F-22/07 in so far as it rejected the pleas in law alleging infringement of Articles 44 and 46 of the Staff Regulations and Article 7 of Annex XIII to the Staff Regulations and an infringement of the principle of legitimate expectations;
- consequently, allow the appellant's claims at first instance and, therefore,
 - the annulment of the decision to classify the appellant in Grade AD 13, step 5, contained in a note of DG ADMIN of 11 May 2006 and in the appellant's salary slip of June 2006 and in his subsequent salary slips;
 - leading to:
 - the reinstatement, with effect from 1 May 2006, of the applicant in grade AD 13, step 2, retaining the multiplication factor 1.1172071;
 - the full restructuring of the appellant's career with retroactive effect from 1 May 2006 to the date of his classification in grade and step as thus corrected (including the valuation of his experience in his classification as thus corrected, his rights of advancement to a higher step and his pension rights), which includes the payment of default interest at the base rate fixed by the European Central Bank for its main refinancing operations, applicable during the period concerned, increased by two points, on the total sum of the difference between the remuneration for his classification as set out in the classification decision and the classification to which he should have been entitled until the date on which the decision on his corrected classification is taken;
 - the order that the Commission is to pay all the costs;
- order the defendant to pay all the costs at first instance and of the appeal.