— a lack of adequate reasoning in the judgment under appeal, inasmuch as the Civil Service Tribunal did not comment on the fact that the documents on the file, leading to the decision which was contested before it, were contradictory, despite the fact that the appellant had raised those inconsistencies in his action at first instance.

Action brought on 7 May 2010 — Moselland v OHIM — Rent a Siete (DIVINUS)

(Case T-214/10)

(2010/C 195/37)

Language in which the application was lodged: German

Parties

Applicant: Moselland eG — Winzergenossenschaft (Bernkastel-Kues, Germany) (represented by: M. Dippelhofer, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Renta Siete, SL (Albacete, Spain)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 22 February 2010 in Case R 1204/2009-2;

— order OHIM to pay the costs of the proceedings, including those incurred during the appeal proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Rent a Siete, SL

Community trade mark concerned: Word mark 'DIVINUS' for goods and services in classes 30, 33 and 35.

Proprietor of the mark or sign cited in the opposition proceedings: Moselland eG

Mark or sign cited in opposition: a national figurative mark, which includes the verbal elements 'Moselland Divinum', for goods in class 33.

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law:

Infringement of Article 76(2) of Regulation (EC) No 207/2009 (1), and Rule 19(2) und Rule 20(1) of Regulation (EC) No 2868/95 (2), as the Board of Appeal has not correctly and/or sufficiently addressed the substantiation of earlier rights,

infringement of Article 76(1)(2) of Regulation (EC) No 207/2009, as the Board of Appeal did not confine itself to relying on the evidence submitted by the applicant, infringement of Article 78(1),(3) and (4) of Regulation (EC) No 207/2009 for incorrect evaluation of evidence and, as the Board of Appeal merely relied on a request for information despite having had evidence contrary to the information received already submitted to it, also infringement of Article 75(2) of Regulation (EC) No 207/2009, as the Board of Appeal failed to grant the applicant the opportunity to make known its views on the factual information gathered by OHIM, infringement of Rule 50(1) of Regulation (EC) No 2868/95, as the Board of Appeal incorrectly did not consider the presentation of an acknowledgement of receipt as sufficient evidence of submission of documents within the prescribed time-limit, infringement of Rule 50(1)(3) of Regulation (EC) No 2868/95 for misuse of power and finally infringement of Rule 51(b) of Regulation (EC) No 2868/95, as the Board of Appeal erred in not reimbursing the fee for appeal.


Action brought on 11 May 2010 — Hellenic Republic v Commission

(Case T-215/10)

(2010/C 195/38)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: I. Khalkias, G. Skiani and E. Leftheriotou)
Defendant: European Commission

Form of order sought
— uphold the action and annul the contested Commission decision in its entirety;
— order the Commission to pay the costs.

Pleas in law and main arguments

By its action, the Hellenic Republic seeks the annulment of the Commission decision of 11 March 2010 excluding from Community financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF), notified as C(2010) 1317 final and published on 12 March 2010 (OJ 2010 L 63, p. 7) as Decision 2001/152/EU, in so far as it concerns financial corrections imposed on the Hellenic Republic in the fields of (a) cotton, (b) rural development measures and (c) distribution of food to the most deprived.

With regard to the correction for cotton, the applicant submits, first, that the Commission assessed the facts incorrectly and the reasons stated for the contested decision are defective so far as concerns the control environment and the compatibility of the cotton aid scheme with the IACS (Integrated Administration and Control System) and so far as concerns on-the-spot checks of areas and risk analysis.

Second, the applicant states that the Commission assessed the facts wrongly and misinterpreted and misapplied Article 13(2) of Regulation (EC) No 1591/2001 (1) and Article 17 of Regulation (EC) No 1051/2001 (2) as regards environmental measures and the inadequate control system and as regards the action taken following the controls which were effected in respect of cotton crops and environmental measures. More specifically, the accusation of a lack of sanctions that the Commission levels against the Hellenic Republic is unfounded in law and in substance, is not based on the provisions of Regulations No 1051/2001 and No 1591/2001 (2) as regards environmental measures and the inadequate control system and as regards the action taken following the controls which were effected in respect of cotton crops and environmental measures. More specifically, the accusation of a lack of sanctions that the Commission levels against the Hellenic Republic is unfounded in law and in substance, is not based on the provisions of Regulations No 1051/2001 and No 1591/2001, finds no support in any provision in force in the period in question and cannot constitute a lawful factor in the reasoning for the correction imposed by the contested decision.

Fourth, the applicant maintains that the Commission misinterpreted Article 7(4) of Regulation No 1051/2001 and Article 1 of each of Regulations No 1123/2004, (3) No 905/2005, (4) No 871/2006 (5) and No 1486/2002 (6) which defined the annual actual and eligible quantity of cotton in relation to the one-off corrections in the periods 2003-04, 2004-05 and 2005-06 for the alleged overshooting of the eligible quantity and for the consequent wrongful payment.

With regard to rural development measures, the applicant submits, first, that the procedure for clearance of the accounts is invalid because of infringement of an essential procedural requirement provided for in subparagraph (a) of the third subparagraph of Article 8(1) of Regulation (EC) No 1663/95 (7) regarding the failure to engage in bilateral discussion so far as concerns the imposition of a correction for the environmental development measures.

Second, the applicant contends that the Commission erred as to the facts, assessed the facts incorrectly, gave deficient reasoning and infringed the principle of proportionality, so far as concerns the alleged weaknesses in the IACS, in the basic controls and in the additional controls.

With regard to the field of distribution of food to the most deprived, the applicant submits, first, that the Commission's position caused it to entertain legitimate expectations that it would not be burdened with the entire expenditure on the programme for the free distribution of rice; the change in the Commission's position after the event constitutes an infringement of the principle of the protection of legitimate expectations and the principle of legal certainty and, in the alternative, amounts to exceeding of the limits of its discretion, if not misuse of powers.

Third, the applicant pleads incorrect interpretation and application of the guidelines for flat-rate corrections and infringement of the principle of proportionality given that the risk run by the EAGF was non-existent; also the state of the control system was not the same in the three periods under examination, 2003-04, 2004-05 and 2005-06, in which case the correction should also be graduated.

Fifth, the applicant submits that the contested decision contains contradictory reasoning for the corrections and incorrect calculations within the corrections, given the existence of discrepancies and conflicting corrections in the financial years at issue.

With regard to rural development measures, the applicant submits, first, that the procedure for clearance of the accounts is invalid because of infringement of an essential procedural requirement provided for in subparagraph (a) of the third subparagraph of Article 8(1) of Regulation (EC) No 1663/95 (7) regarding the failure to engage in bilateral discussion so far as concerns the imposition of a correction for the environmental development measures.
Second, the applicant pleads that the transport costs that were ascribed to it were calculated incorrectly.

Third, the applicant maintains that the Commission interpreted and applied Community provisions incorrectly, in particular Article 3(2) of Regulation (EEC) No 3149/92, (8) infringed the principle of proportionality and exceeded the limits of its discretion.

(3) Commission Regulation (EC) No 1123/2004 of 17 June 2004 fixing, for the 2003/04 marketing year, the actual production of unginned cotton and the amount by which the guide price is to be reduced as a result (OJ 2004 L 218, p. 3).

Action brought on 10 May 2010 — Monster Cable Products v OHIM — Live Nation (Music) UK Ltd (MONSTER ROCK)
(Case T-216/10)
(2010/C 195/39)
Language in which the application was lodged: English

Parties
Applicant: Monster Cable Products, Inc. (Brisbane, USA) (represented by: O. Günzel and W. von der Osten-Sacken, lawyers)

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

Other party to the proceedings before the Board of Appeal: Live Nation (Music) UK Ltd (London, United Kingdom)

Form of order sought
— Annul the decision of the First Board of Appeal of the Office For Harmonisation in the Internal Market (Trade Marks and Designs) of 24 February 2010 in case R 216/2009-1, as far as the appeal was dismissed;

— Reject the opposition No B 754335 against Community trademark application No 3333804 ‘MONSTER ROCK’ in its entirety; and

— Order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments
Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark ‘MONSTER ROCK’, for goods in class 9

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: United Kingdom trade mark registration No 1313176 of the word mark ‘MONSTERS OF ROCK’, for goods in class 16; United Kingdom trade mark registration No 1313177 of the word mark ‘MONSTERS OF ROCK’, for goods in class 25; United Kingdom trade mark registration No 1313178 of the word mark ‘MONSTERS OF ROCK’, for goods in class 26; United Kingdom trade mark registration No 2299141 of the word mark ‘MONSTERS OF ROCK’, for goods and services in classes 9, 16, 25, 41 and 43; trade mark ‘MONSTERS OF ROCK’, well-known (in the sense of Article 6 bis of the Paris Convention) in the old 15 Member States; unregistered trade mark ‘MONSTERS OF ROCK’, used in the course of trade in the old 15 Member States

Decision of the Opposition Division: Upheld the opposition for all the contested goods and rejected the application in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law:

Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal: (i) wrongly assessed the identity/similarity of the goods, (ii) didn’t take into account the differences between the trademarks, in particular their conceptual differences, and (iii) failed to determine the scope of protection of the earlier sign.