

### Pleas in law and main arguments

*Community trade mark concerned:* Word mark 'BioGeneriX' for goods in Classes 1 and 5 (Application No 2 603 124).

*Decision of the Examiner:* Refusal of part of the application for registration.

*Decision of the Board of Appeal:* Appeal dismissed.

*Pleas in law:* Breach of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 (<sup>(1)</sup>), as the trade mark applied for has the requisite minimum level of distinctiveness and there is no need to preserve its availability.

(<sup>(1)</sup>) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

### Action brought on 14 February 2007 — Movimondo Onlus v Commission

(Case T-52/07)

(2007/C 82/106)

*Language of the case:* Italian

### Parties

*Applicant:* Movimondo Onlus (Rome, Italy) (represented by: P. Vitali, G. Verusio, G.M. Roberti and A. Franchi, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

The applicant claims that the Court should:

- annul the contested Decision;
- in the alternative, declare, pursuant to Article 241 EC, that Articles 133 and 175 of Commission Regulation No 2342/2002 of 23 December 2002 are unlawful and inapplicable;
- order the Commission to pay the costs.

### Pleas in law and main arguments

1. By the present action, the Associazione Movimondo ONLUS — a non-governmental organisation for international cooperation and solidarity — seeks, in accordance with the fourth paragraph of Article 230 EC, annulment of the Commission's decision of 1 December 2006 (prot. C (2006) 5802 final) imposing an administrative penalty on the non-governmental organisation (NGO) Movimondo for serious breach

of professional ethics and non-performance of contractual obligations.

2. In that connection, it should be pointed out that contractual relations with the Commission in the case of humanitarian aid and actions in the field of development cooperation are governed by contracts called *Grant Agreements*, concluded in accordance with *Framework Partnership Agreements* (FPAs) and general contract conditions. In particular, the ECHO FPAs concerned by the events in relation to which the Commission intended to impose the contested penalty are the following:
  - FPA No 3-134, signed on 6 November 2003;
  - FPA No CCP 99/0119 of 26 February 1999.

3. In support of its action for annulment of the decision of 1 December 2006, Movimondo puts forward five pleas in law.

By the first plea, the applicant alleges infringement of provisions of law in relation to Articles 93, 96 and 114 of Council Regulation No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, and raises a plea of illegality in respect of Articles 133 and 175 of Commission Regulation 2342/2002 laying down detailed rules for the implementation of Council Regulation No 1605/2002 on the ground that they infringe Article 183 of Council Regulation No 2988/1995 of 18 December 1995.

By the second plea, the applicant alleges that the Commission made an erroneous and incomplete assessment of the factual basis for the allegations against the applicant, and maintains that there was no conclusive evidence on which to base the decision imposing a penalty.

By the third plea, the applicant alleges breach of the general principle of *audi alteram partem*.

By the fourth plea, the applicant alleges an error of assessment of the facts on which the penalty was based and attribution in relation to the applicant of non-existent circumstances. At the same time, it alleges breach of the principle of proportionality and failure properly to state the grounds for its decision as regards the 'effective, proportionate and dissuasive nature' [of the penalty] as required under Article 114 of Regulation No 1605/2002 (the Financial Regulation).

Lastly, by the fifth plea, the applicant alleges, first, that the projects constituting a *sine qua non* for the contested decision are of wholly indeterminate nature, and that the decision is time-barred. At the same time, it maintains that there is no Community act which provides for such a penalty and alleges infringement of Articles 2(2) and 3(1) of Council Regulation No 2988/95 of 18 December 1995. Secondly, it alleges infringement of Articles 175 and 133 of Commission Regulation No 2342/2002.