

Decision of the Opposition Division: Partly upheld the opposition.

Decision of the Board of Appeal: Annulment of the decision under appeal and dismissal of the opposition.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 ⁽¹⁾ since there is a likelihood of confusion between the conflicting marks.

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

Action brought on 22 November 2007 — Centre d'Étude et de Valorisation des Algues v Commission

(Case T-428/07)

(2008/C 22/90)

Language of the case: French

Parties

Applicant: Centre d'Étude et Valorisation des Algues SA (CEVA) (Pleubian, France) (represented by: J.-M. Peyrical, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- as the principal claim, find procedural irregularity and breach of the principle that both parties should be heard and therefore annul Commission debit note No 3240908670 of 20 September 2007 and order the Commission to repay the debit note at issue to CEVA;
- in the alternative, find that the errors found in the audit report are not sufficiently serious for Article 3.5 of Annex II to the contract to be applied; annul Commission debit note No 3240908670 of 20 September 2007 in so far as it claims full repayment of the sums paid to CEVA under the SEAHEALTH contract; and order the Commission to repay the debit note at issue in favour of CEVA;
- in the further alternative, appoint an expert of the Court of First Instance's own choice with the task of: taking up again CEVA's method of calculating the time spent on projects; comparing that method with the SEAHEALTH contract and with the actual costs submitted in the cost statements; stating, as a percentage, the difference between the total errors in the registration of work time as presented to the Commission and the total registration of that work time according to the calculation method applicable from that time on at CEVA; carrying out an assessment of the direct working time needed to carry out CEVA's tasks in the context of the SEAHEALTH contract; and stating whether

that effective working time could have amounted to fewer than the 7 092,88 hours claimed by CEVA.

Pleas in law and main arguments

By this action, the applicant seeks annulment of the debit note by which the Commission ordered the repayment in full of the advances paid to the applicant in relation to the SEAHEALTH contract No QLK1-CT-2002-02433, concerning the project 'Food, Nutrition and Health' which was part of the 'Quality of Life and Management of Living Resources' key action ⁽¹⁾.

In support of its application, it relies on a plea in law alleging breach of the rights of the defence inasmuch as the Commission, in breach of the principle that both parties should be heard, based its order for repayment on the timesheets and conclusions of OLAF of which the applicant had no knowledge.

In the alternative, the applicant challenges the Commission's application of Article 3.5 of Annex II and its finding that the facts in this case were sufficiently serious for it to rely on the concept of serious financial irregularities justifying full repayment of the advances.

⁽¹⁾ Fifth framework programme of the European Community for research, technological development and demonstration activities (1998-2002).

Action brought on 23 November 2007 — Bodegas Montebello v OHIM — Montebello (MONTEBELLO RHUM AGRICOLE)

(Case T-430/07)

(2008/C 22/91)

Language in which the application was lodged: Spanish

Parties

Applicant: Bodegas Montebello, S.A. (Montilla, Spain) (represented by: T. Andrade Boué, M.I. Lehmann Novo, and A. Hernández Lehmann, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Montebello (limited company) (Guadalupe, France)

Form of order sought

- annulment of OHIM's decision of 7 September 2007 in Case R 223/2007-2;