

contract will most probably have been fully executed by the time the Court reaches its decision or if it is no longer possible to annul the decision, the applicant requests monetary compensation (damages) in accordance with Articles 235 and 288 EC.

⁽¹⁾ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, p. 1).

⁽²⁾ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, p. 114).

Decision of the Opposition Division: Upheld the opposition and rejected the application for registration.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 ⁽¹⁾ given that there is no likelihood of confusion between the signs in conflict.

⁽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 24 January 2008 — Codorniu Napa v OHIM — Bodegas Ontañón (ARTESA NAPA VALLEY)

(Case T-35/08)

(2008/C 92/67)

Language in which the application was lodged: Spanish

Parties

Applicant: Codorniu Napa, Inc. (California, United States of America) (represented by: X. Fàbrega Sabaté and M. Curell Aguilà, 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: Bodegas Ontañón, S.A.

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 20 November 2007 in Case R 747/2006-4, and
- order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant.

Community trade mark applied for: Figurative mark 'ARTESA NAPA VALLEY' for goods in Class 33 (application No 3.079.159)

Proprietor of the mark or sign cited in the opposition proceedings: Bodegas Ontañón, S.A.

Mark or sign cited in the opposition proceedings: Community figurative trade mark No 2.050.623 'ARTESO' for goods in Classes 33 and 35, Spanish word mark No 844.194 'LA ARTESA' for goods in Class 33.

Action brought on 23 January 2008 — Walton v Commission

(Case T-37/08)

(2008/C 92/68)

Language of the case: English

Parties

Applicant: Robert Walton (Oxford, United Kingdom) (represented by: D. Beard, Barrister)

Defendant: Commission of the European Communities

Form of order sought

- A declaration that the decision of the Commission to set-off the sum of EUR 36 551,58 against the sums due to Mr Walton pursuant to the judgment of the Court in Case T-144/02 was unlawful; or
- a declaration that the decision of the Commission to set off the sum of EUR 36 551,58 against the sums due to Mr Walton pursuant to the judgment of the Court in Case T-144/02 was unlawful in part; or
- a declaration that the sum of EUR 36 551,58 set off by the Commission against the sums due to Mr Walton pursuant to the judgment of the Court in Case T-144/02 should be recalculated so as to remove the Commission's claim for interest; and/or
- an order that (a) the established amount receivable of EUR 13 104,14 plus interest; and/or (b) the established amount receivable of EUR 13 815,16 plus interest be cancelled; and
- an order that the Commission pay the appellant's costs; and
- such further or other measures as the Court may consider just and equitable.

Pleas in law and main arguments

By judgment of 12 July 2007 in Case T-144/02 *Richard J. Eagle and Others v Commission* [2007] ECR II-0000 the Commission was ordered by the Court of First Instance to pay the applicant damages of a certain amount.

By payment of 16 November 2007 the Commission paid a reduced amount having set off the sum of EUR 36 551,58. The applicant challenges the decision of the Commission to reduce the sums due to him by this amount.

In support of its application, the applicant submits that the Commission erred in law in reaching the contested decision, as the decision was an unlawful abuse of process since the Commission had withdrawn its claim for set-off during the proceedings before the Court and therefore could not unilaterally pursue the issue subsequently.

The applicant furthermore contends that the contested decision was contrary to a binding legitimate expectation of the applicant, as the Commission had accepted the applicant's figures in correspondence following the judgment of the Court.

Finally, the applicant claims that the debit notes upon which the contested decision relied failed to provide a proper legal basis for the decision and that the decision was based upon a fundamental miscalculation in relation to interest claimed.

Action brought on 22 January 2008 — *Evropaiki Dynamiki v Commission*

(Case T-39/08)

(2008/C 92/69)

Language of the case: English

Parties

Applicant: *Evropaiki Dynamiki — Proigmena Systemata Tilepikoinonion Pliroforikis kai Tilematikis AE* (Athens, Greece) (represented by: N. Korogiannakis, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Annul the decision of the Commission to evaluate the applicant's bid as not successful and award the contract to the successful contractor;

- order the Commission to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 441 564,50;

- order the Commission to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected;

- order the Commission to pay the applicant's legal and other costs and expenses incurred in connection with this application.

Pleas in law and main arguments

The applicant submitted a bid in response to the defendant's call for an open tender concerning hosting, management, enhancement, promotion and maintenance of the Commission's Internet portal on eLearning (*elearningeuropa.info*) (O) 2007/S 87-105977). The applicant contests the defendant's decision of 12 November 2007 rejecting the applicant's bid and informing the applicant that the contract would be awarded to another tenderer. The applicant further requests compensation for the alleged damages caused by the tender procedure.

In support of its application, the applicant submits that the defendant committed manifest errors of assessment and failed to state reasons in accordance with Article 253 EC. Furthermore, the applicant alleges that the defendant confused evaluation criteria with award criteria when evaluating the bids and used evaluation criteria that were not disclosed to the tenderers before the deadline for submitting the offers. Finally, the applicant contends that the defendant violated the principle of non-discrimination.

Action brought on 1 February 2008 — *Vakakis v Commission*

(Case T-41/08)

(2008/C 92/70)

Language of the case: English

Parties

Applicant: *Vakakis International — Symvouli gia Agrotiki Anaptixi AE* (Athens, Greece) (represented by: B. O'Connor, Solicitor)

Defendant: Commission of the European Communities