

The applicant claims in support of its action that the contested decision is based on an erroneous assessment of the facts. In particular, adequate supporting evidence was inappropriately regarded as being inadequate, and costs of employing temporary assistants and trainees, together with costs provided for in the budget and certain travel costs were inappropriately disallowed.

(¹) Decision No 803/2004/EC of the European Parliament and of the Council of 21 April 2004 adopting a programme of Community action (2004 to 2008) to prevent and combat violence against children, young people and women and to protect victims and groups at risk (the Daphne II programme) (OJ 2004 L 143, p. 1).

Action brought on 28 January 2008 — Furukawa Electric North America v OHIM (SLIM LINE)

(Case T-36/08)

(2008/C 79/62)

Language in which the application was lodged: German

Parties

Applicant: Furukawa Electric North America, Inc. (Norcross, United States of America) (represented by O. Rauscher, lawyer)

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

Form of order sought

The applicant claims that the Court should:

- annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 November 2007 in case number R 1532/2007-2;
- order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'SLIM LINE' for goods in Class 9 (Application No 5 907 266)

Decision of the Examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Misapplication of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 (¹), as the name 'SLIM LINE' is neither a descriptive indication nor is it devoid of any distinctive character.

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

Appeal brought on 28 January 2008 by Luigi Marcuccio against the judgment of the Civil Service Tribunal delivered on 6 December 2007 in Case F-40/06, Marcuccio v Commission

(Case T-46/08 P)

(2008/C 79/63)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

- annul the order delivered on 6 December 2007 in Case F-40/06 *Marcuccio v Commission* of the First Chamber of the Public Service Tribunal of the European Union insofar as (a) the action brought by the applicant at first instance was dismissed on grounds other than absence of legal interest in bringing proceedings; (b) the applicant's claims to obtain compensation in respect of the damage ('the damage in question') arising from the facts in the case were rejected; and (c) the applicant was ordered to pay the defendant's costs;
- declare that the action at first instance was admissible, and in particular that the applicant, at the time he brought that action, had a legal interest in bringing proceedings;
- uphold the conclusions relating to compensation for the damage in question and order the defendant to pay all the costs borne by the applicant in respect of both the action at first instance and the present appeal;
- in the alternative, refer the present case back to the Public Service Tribunal for a ruling on: (a) all those parts of the present case on which the court did not rule or which were annulled by the judgment to be made in this appeal; (b) the costs of the action at first instance and of the appeal.

Pleas in law and main arguments

Absolute failure to state reasons and reasons which are, inter alia, manifestly illogical, inconsistent and confused, absence of preliminary enquiries, failure to rule on a fundamental fact of the present case and infringement of the obligation of *clare loqui*, misrepresentation and distortion of the facts (in particular, paragraphs 10, 12, 26 to 38 inclusive and 42 to 46 inclusive of the contested order).

Erroneous interpretation, misinterpretation and misapplication of the general principles and provisions of law and Community case-law on compensation for damage (in particular, paragraphs 42 to 46 of the contested order).

Manifest lack of logic of the judgment and ruling of the Civil Service Tribunal on costs as well as unreasonableness, absolute failure to state reasons, inconsistency, misrepresentation and distortion of the actual facts, arbitrariness (in particular, paragraphs 49 and 50 of the contested order).

Absolute failure to state the reasons for the decision which is the subject-matter of the complaint in the action at first instance (in particular, paragraphs 26 to 38 inclusive of the contested order).

Misrepresentation and distortion of the facts and related procedural errors which are so serious that they infringe irremediably the rights of the applicant to a defence and infringe essential procedural requirements such as to invalidate irremediably the contested order (in particular, paragraph 24 of the contested order).

Infringement of the rules concerning a fair trial, with particular reference to the provisions of the European Convention on Human Rights (paragraphs 24 and 26 to 38 inclusive of the contested order).

Action brought on 31 January 2008 — Italy v Commission

(Case T-53/08)

(2008/C 79/64)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: S. Fiorentino, Avvocato dello Stato)

Defendant: Commission of the European Communities

Form of order sought

— annul Commission decision C(2007) 5400 final of 20 November 2007, notified on 21 November 2007, concerning State aid No C 36/A/2006 (ex NN 38/2006) which Italy paid to ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche.

Pleas in law and main arguments

By the contested decision, the State aid paid by Italy to ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche, and that granted but not yet paid to the same beneficiaries, in the form of favourable tariff conditions for the supply of electricity, were declared incompatible with the common market.

In support of its claims, the applicant relies on the following pleas:

- (1) Infringement of Articles 87(1) and 88(3) EC and erroneous reconstruction of the facts. In its decision the Commission failed to consider that the contested measure adopted by the Italian State did not constitute State aid since it did not confer an economic advantage. In fact the measure extending the preferential electricity tariffs to be applied to the companies in the proceedings, the assignee of Terni SpA, was owing as a supplement to the expropriation compensation granted previously to Terni SpA on account of the fact that legal provisions adopted subsequently involved a longer term in respect of the concession for the production of the expropriated energy.
- (2) Infringement of Articles 87 and 88(3) EC and erroneous reconstruction of the facts. In its decision the Commission failed to consider that the contested measure adopted by the Italian State did not constitute State aid since the aid was not granted through State resources. In fact the cost of the measure is borne by the other users of the energy supply service.
- (3) Infringement of essential procedural requirements in relation to absence of preliminary enquiries and infringement of the rights of the defence. In its decision the Commission stated that the results of an economic study to assess all the sacrifices imposed on Terni in consequence of the expropriation and all the benefits obtained by that company by way of compensation were irrelevant because the suitability of the compensation mechanism can be assessed only *ex ante*, namely, at the time of the expropriation. The study was carried out in accordance with previous Commission guidance. The Commission, taking the view that in the abstract a study requested by it previously was irrelevant, should have carried out further preliminary enquiries, reopening the discussion concerning the methods of carrying out the study.
