

The applicant, the owner-operator of a service station which had concluded a supply contract with REPSOL CPP claims that since 19 November 2007, the date on which it received notification from the monitoring trustee of its inclusion in Annex I of REPSOL CPP's commitments, the contested decision directly and individually concerns it.

In support of its claims, the applicant complains, first of all, that the Commission infringed Article 9 of Regulation 1/2003. In particular, the applicant claims that the Commission, although aware of the correct interpretation of the competition rules relating to time limits, accepted the commitments proposed by REPSOL CPP, going beyond and infringing the aim of Article 9 of Regulation 1/2003. In addition, the applicant claims in that context that the contested decision infringes Article 9 of Regulation 1/2003 and the principle of proportionality since the commitments accepted by the Commission were not effective to give an appropriate response to the concerns expressed by the applicant.

Second, the applicant relies on infringement of the principle according to which persons subject to Community law may not benefit from their own unlawful acts or become enriched without just cause.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

**Action brought on 28 January 2008 — Fusco v OHIM —  
Fusco International (FUSCOLLECTION)**

(Case T-48/08)

(2008/C 92/74)

*Language in which the application was lodged: Italian*

**Parties**

*Applicant:* Vincenzo Fusco (represented by: B. Saguatti, 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:* Antonio Fusco International SA, Luxembourg (Lugano branch) (Lugano, Switzerland)

**Form of order sought**

— annul the decision of the Second Board of Appeal of 24 October 2007 and amend it to the effect that the action brought by the applicant before the Board of Appeal should be considered to be well founded and, consequently, the opposition should be upheld;

— order OHIM and the intervening party, Antonio Fusco International SA, to pay the costs of the present proceedings and those of the proceedings before the Board of Appeal and the Opposition Division.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Antonio Fusco International SA, Luxembourg (Lugano branch)

*Community trade mark concerned:* Figurative mark FUSCOLLECTION (application for registration No 1.503.366) in respect of goods in Classes 9, 18 and 25

*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant

*Mark or sign cited in opposition:* Community trade mark (No 727.375) and Italian trade mark (No 489.262) ENZO FUSCO in respect of goods in Class 25

*Decision of the Opposition Division:* Rejection of the opposition

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

*Pleas in law:* Infringement of Art 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark

**Appeal brought on 5 February 2008 by Commission of the  
European Communities against the judgment of the Civil  
Service Tribunal delivered on 22 November 2007 in Case  
F-109/06, Dittert v Commission**

(Case T-51/08 P)

(2008/C 92/75)

*Language of the case: French*

**Parties**

*Appellant:* Commission of the European Communities (represented by G. Berscheid and K. Herrmann, acting as Agents)

*Other party to the proceedings:* Daniel Dittert (Luxembourg, Grand Duchy of Luxembourg)

**Form of order sought by the appellant**

— Annul the judgment of the Civil Service Tribunal of 22 November 2007 in Case F-109/06 *Dittert v Commission* and refer the case back to the Civil Service Tribunal;  
— order the respondent to pay the costs.

**Pleas in law and main arguments**

By the present appeal, the Commission seeks annulment of the judgment of 22 November 2007 in Case F-109/06 *Dittert v Commission*, by which the Civil Service Tribunal (CST) annulled its decision allocating to the applicant at first instance a number of priority points insufficient for him to be promoted in promotion year 2005 and its decision finalising the list of officials promoted during that promotion year inasmuch as it does not include the applicant's name.

In support of its appeal, the Commission raises three pleas in law seeking annulment.

Firstly, the Commission submits that the CST wrongly applied Article 45 of the Staff Regulations in that it attributed excessive importance to the involvement of the Director General in the procedure for allocating points, thus restricting unduly the discretion of the Appointing Authority following the finding that the lack of such involvement constituted a substantial procedural error.

Secondly, the Commission submits that the CST infringed the jurisdiction of the Appointing Authority in breach of Article 45 of the Regulations and exceeded its powers of judicial control by addressing an instruction to the Appointing Authority.

Thirdly, the Commission alleges that the CST failed to give sufficient reasons for the finding that the allocation to the applicant at first instance of a certain number of priority points by the Promotion Committee did not constitute an adequate remedy for the procedural error classified by the Tribunal as 'substantial' consisting in the lack of involvement of the Director General. Moreover, it claims that the CST based the contested judgment on a distortion of the contents of minutes of a meeting of the Promotion Committee.

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**Appeal brought on 5 February 2008 by Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 22 November 2007 in Case F-110/06, *Carpi Badía v Commission***

(Case T-52/08 P)

(2008/C 92/76)

*Language of the case: French*

**Parties**

*Appellant:* Commission of the European Communities (represented by G. Berscheid and K. Herrmann, acting as Agents)

*Other party to the proceedings:* José María Carpi Badía (Luxembourg, Grand Duchy of Luxembourg)

**Form of order sought by the appellant**

- Annul the judgment of the Civil Service Tribunal of 22 November 2007 in Case F-110/06 *Carpi Badía v Commission* and refer the case back to the Civil Service Tribunal;
- order the respondent to pay the costs.

**Pleas in law and main arguments**

By the present appeal, the Commission seeks annulment of the judgment of 22 November 2007 in Case F-110/06 *Carpi Badía v Commission*, by which the Civil Service Tribunal (CST) annulled its decision allocating to the applicant at first instance a number of priority points insufficient for him to be promoted in promotion year 2005 and its decision finalising the list of officials promoted during that promotion year inasmuch as it does not include the applicant's name.

In support of its appeal, the Commission raises three pleas in law seeking annulment identical to those raised in Case T-51/08 P *Commission v Dittert*.

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**Appeal brought on 8 February 2008 by Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 27 November 2007 in Case F-122/06, *Roodhuijzen v Commission***

(Case T-58/08 P)

(2008/C 92/77)

*Language of the case: French*

**Parties**

*Appellant:* Commission of the European Communities (represented by J. Currall and D. Martin, acting as Agents)

*Other party to the proceedings:* Anton Pieter Roodhuijzen (Luxembourg, Grand Duchy of Luxembourg)

**Form of order sought by the appellant**

- Annul the judgment of the Civil Service Tribunal of 27 November 2007 in Case F-122/06 *Roodhuijzen v Commission*;
- dismiss the action brought by Mr Roodhuijzen;
- order that each party shall bear its own costs of the present appeal and of the action before the Court of First Instance.