

**Form of order sought**

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 November 2007 (Case No R 1656/2006-1);
- Order the defendant to pay the costs.

**Pleas in law and main arguments**

*Community trade mark concerned:* the three-dimensional trade mark in the shape of a perfume bottle for goods in class 3 (Application No 4 995 361).

*Decision of the Examiner:* Dismissal of the application.

*Decision of the Board of Appeal:* Rejection of the appeal.

*Pleas in law:* Infringement of Article 7(1)(b) of Regulation (EC) No 40/94 <sup>(1)</sup>, because the trade mark applied for has a distinctive character.

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

**Appeal brought on 26 February 2008 by Kris Van Neyghem against the judgment of the Civil Service Tribunal delivered on 13 December 2007 in Case F-73/06, Van Neyghem v Commission**

(Case T-105/08 P)

(2008/C 107/66)

*Language of the case:* French

**Parties**

*Appellant:* Kris Van Neyghem (Vissenken, Belgium) (represented by S. Rodrigues and C. Bernard-Glanz, lawyers)

*Other party to the proceedings:* Commission of the European Communities

**Form of order sought by the appellant**

- declare the present appeal admissible;
- annul the judgment of the Civil Service Tribunal (Second Chamber) delivered on 13 December 2007 in Case F-73/06;

- uphold the claims for annulment and for compensation submitted by the appellant to the Civil Service Tribunal;
- order the Commission to pay the costs of both instances.

**Pleas in law and main arguments**

In his appeal, the appellant is seeking the annulment of the judgment of the Civil Service Tribunal (the 'Tribunal') dismissing his application, on the one hand, for the annulment of the decision of the selection board in general competition EPSO/A/19/04 not to admit the applicant to the oral test in that competition and, on the other, for damages for the material and non-material damage which he allegedly suffered.

In support of his appeal, the appellant pleads a misunderstanding of evidence produced before the Tribunal, namely, a copy of the written test.

The applicant pleads, in addition, an error in the Tribunal's reasoning concerning the absence of a manifest error of assessment on the part of the president of the selection board in the comparison between the mark given to the applicant and the literal assessment in the evaluation sheet.

**Action brought on 27 February 2008 — CPEM v Commission**

(Case T-106/08)

(2008/C 107/67)

*Language of the case:* French

**Parties**

*Applicant:* Centre de promotion de l'emploi par la micro-entreprise (CPEM) (Marseille, France) (represented by: C. Bonnefoi, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

- annulment of the debit note;
- recognise a right to damages for public detriment to the reputation of a body acting in the context of a task of general interest (estimated at EUR 100 000);
- repayment of lawyers' fees and the costs of legal assistance made necessary, proof of which can be provided.

**Pleas in law and main arguments**

By this action, the applicant seeks annulment of the Commission decision contained in debit note No 3240912189 of 17 December 2007 relating to Commission Decision C(2007) 4645 of 4 October 2007, cancelling, following an OLAF report, the assistance granted by the European Social Fund to finance, by way of a global subsidy, a pilot project carried out by the applicant <sup>(1)</sup> the annulment of which is sought by the applicant in Case T-444/07 *CPME v Commission* <sup>(2)</sup>.

In support of its application, the applicant submits, principally, that the Commission has erred in law and exceeded its powers in so far as the contested debit note was not addressed to the actual debtor. By relying on infringement of Article 135 of the Financial Regulation No 1605/2002 <sup>(3)</sup>, it submits that the debit note should have been addressed to the body which played a financially responsible role in the project concerned, which actually received the grant from the European Social Fund.

Moreover, the applicant submits that the fact that the debit note was addressed to it damages its image and its credibility with respect to its financial partners given the general interest task it performs.

<sup>(1)</sup> Commission Decision C(1999) 2645 of 17 August 1999, amended by Decision No C(2001) 2144 of 18 September 2001.

<sup>(2)</sup> OJ 2008 C 37, p. 29.

<sup>(3)</sup> 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 2002 L 248, p. 1).

**Action brought on 29 February 2008 — Spain v Commission**

**(Case T-113/08)**

(2008/C 107/68)

*Language of the case: Spanish*

**Parties**

*Applicant:* Kingdom of Spain (represented by: M. Muñoz Pérez)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Annul Commission Decision 2008/68/EC of 20 December 2007 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), to the extent it relates to the subject matter of this action, and
- Order the Commission to pay the costs.

**Pleas in law and main arguments**

The effect of the contested decision is to exclude from Community financing certain corrective measures, among which, for the purposes of this action, are included those concerning aid to olive oil production in the seasons 1998/1999, 1999/2000 and 1999/2001, to a total sum of EUR 183 965 185,54; and direct aid payments, aid for arable crop areas, applied for in the years 2003 and 2004, to a total sum of EUR 16 591 528,35.

In particular, this action relates to the corrective financial measures adopted in relation to aid to olive oil production, excluding the proportion relating to the season 1999/2000 in Andalusia, and that adopted in relation to aid to arable crops areas applied for in the years 2003 and 2004.

In support of its claims, the applicant alleges:

- As regards aid to olive oil production:
  - Infringement of Article 8 of Regulation No 1663/95 <sup>(1)</sup>, in that the financial corrective measures were not based on observations made by the Commission on verifications made as a result of the investigation, but on extrapolations from observations relating to other investigations.
  - Infringement of Articles 2 and 3 of Regulation No 729/70 <sup>(2)</sup> and of Article 2 of Regulation No 1258/1999 <sup>(3)</sup>, since the contested decision applies them in inappropriate circumstances, given that the theoretical irregularities relied on by the Commission to justify the financial corrective measures decided upon are insufficient.
  - Failure to observe the period of 24 months prior to written communication of the results of the verifications, laid down in Article 7(4) of Regulation No 1258/99.
- As regards the aid to arable crops areas:
  - Infringement of the procedure laid down in Article 8(1) of Regulation No 1663/95, since there was no statement of the reasons justifying the financial corrective measures in the document in which the results of the verifications were notified to the Member State, and alternatively, failure to observe the period of 24 months laid down in Article 7(4) of Regulation No 1258/1999.