

**Action brought on 10 March 2008 — PC-Ware Information Technologies BV v Commission of the European Communities**

(Case T-121/08)

(2008/C 116/49)

*Language of the case: Dutch*

**Parties**

*Applicant:* PC-Ware Information Technologies BV (Amsterdam, Netherlands) (represented by: L. Devillé, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Declare the action for annulment admissible;
- Annul the decision of the Directorate-General of the European Commission, communicated to the applicant by letter of 11 January 2008, which rejected the applicant's tender for public procurement contract DIGIT/R2/2007/022 — LAR 2007 and awarded the contract to the successful tender;
- Declare that the Commission's action was unlawful and gives rise to the Commission's liability;
- In the alternative, if the contract has already been carried out when the Court gives judgment or the decision can no longer be declared void, order the Commission to pay damages of EUR 654 962,38 as compensation for the loss suffered by the applicant in regard to that procedure;
- Order the Commission to pay the costs of the proceedings and other costs even if the action is dismissed.

**Pleas in law and main arguments**

The applicant took part in public procurement procedure DIGIT/R2/2007/022 — LAR 2007 — Large account reseller Microsoft products (LAR 2007) (OJ 2007 S 183-223062), whose objective was to establish a framework contract for a single source purchase channel, covering the acquisition of Microsoft software products and licences. The applicant contests the Commission's decision to award that contract to another undertaking.

In support of its application, the applicant submits, first, that insufficient reasons are given for the decision. The applicant states that upon the submission of its offer it stated expressly that it gave the highest possible reduction on the basis of Article 40 of the Belgian Law of 14 July 1991 on trade practices and consumer information and protection, which prohibits sales at a loss. The Commission failed to give sufficient reasons in the decision with regard to the application of that prohibition and compliance with the principle of equal treatment.

Secondly, the applicant submits that it is apparent that the successful offer infringes Article 40 of the abovementioned Belgian Law of 14 July 1991. According to the applicant, the Commission should have refused the successful offer pursuant to Article 55 of Directive 2004/18/EC<sup>(1)</sup>, Article 139(1) and Article 146(4) of Regulation No 2342/2002<sup>(2)</sup> and the principles of good administration.

<sup>(1)</sup> 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 2004 L 134, p. 114).

<sup>(2)</sup> Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).

**Action brought on 14 March 2008 — Spitzer v OHIM — Homeland Housewares (Magic Butler)**

(Case T-123/08)

(2008/C 116/50)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Harald Spitzer (Hörsching, Austria) (represented by: T. Schmitz, Rechtsanwalt)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Homeland Housewares, LLC (Los Angeles, United States of America)

**Form of order sought**

- Annul the decision of the First Board of Appeal of OHIM of 7 January 2008 (Case R 1508/2006-1);
- reject the opposition entered by Homeland Housewares, LLC, against the word mark for which registration is sought, 'Magic Butler' No 4 109 906;
- order the defendant to pay the costs of the proceedings.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Harald Spitzer.

*Community trade mark concerned:* The word mark 'Magic Butler' for goods in Classes 7 and 21 (application No 4 109 906)