

Pleas in law and main arguments

On 29 March 1996 the European Community, represented by the Commission, entered into a contract BU 183/95 UK/AT with Sidney C. Banks Plc and Jenbacher Energiesysteme AG for the implementation of the project 'Advanced automated gasifier with CHP using waste wood as fuel' under the Community activities in the field of non-nuclear energy ⁽¹⁾. Pursuant to the contract provision, the Commission made an advance payment of its contribution for the project to the designated contract coordinator, Sydney C. Banks Plc.

By fax dated 25 September 1996, Sidney C. Banks Plc informed the Commission that it had decided to withdraw from the project. On 17 April 1998 the European Community, represented by the Commission, entered into Addendum No 1 to the contract by which Atlantic Energy Ltd replaced Sidney C. Banks Plc as a party to, and coordinator under the contract.

Pursuant to clause 2 of the Addendum Sidney C. Banks Plc transferred the advance payment received from the Commission (plus interest) to Atlantic Energy Ltd in April 1998.

The Commission claims an order that Atlantic Energy Ltd repay the advance payment plus interest on the grounds either that the project never effectively commenced or, if it did, was terminated by the Commission.

⁽¹⁾ Council Decision 94/806/EC of 23 November 1994 adopting a specific programme for research and technological development, including demonstration, in the field of non-nuclear energy (1994 to 1998) (OJ L 334, 22.12.1994, p. 87).

Action brought on 16 May 2008 — Schuhpark Fascies v OHIM — Leder & Schuh (jello SCHUHPARK)

(Case T-183/08)

(2008/C 171/89)

Language in which the application was lodged: German

Parties

Applicant: Schuhpark Fascies GmbH (Warendorf, Germany) (represented by: A. Peter and J. Braune, 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: Leder & Schuh AG (Graz, Austria)

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 March 2008 in appeal proceedings R 1560/2006-4;
- Order the defendant to pay the costs incurred by the applicant.

Pleas in law and main arguments

Applicant for a Community trade mark: Leder & Schuh AG.

Community trade mark concerned: The word and figurative mark 'jello SCHUHPARK' for goods in Classes 1, 3, 9, 14, 16, 18, 21, 24-26 and 28 (Application No 1 269 372).

Proprietor of the mark or sign cited in the opposition proceedings: Schuhpark Fascies GmbH.

Mark or sign cited in opposition: The German word mark 'Schuhpark' for goods in Class 25 (No 1 007 149), in respect of opposition to the registration for goods in Classes 18, 21, 25 and 26.

Decision of the Opposition Division: Opposition upheld in part and application rejected in part.

Decision of the Board of Appeal: Annulment of the appealed decision and rejection of the opposition.

Pleas in law: Infringement of the second sentence of Article 43(2) and Article 43(3) of Regulation (EC) No 40/94 ⁽¹⁾ and breach of the second sentence of Rule 22(2) of Regulation (EC) No 2868/95 ⁽²⁾ in that the applicant has sufficiently proved that the opposition mark has been used in a manner which preserves its rights.

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

⁽²⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 13 May 2008 — Rodd & Gunn Australia v OHIM (Representation of a dog)

(Case T-187/08)

(2008/C 171/90)

Language in which the application was lodged: English

Parties

Applicant: Rodd & Gunn Australia Limited (Wellington, New Zealand) (represented by: B. Brandreth, Barrister and N. Jenkins, Solicitor)

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

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 March 2008 in case R 1245/2007-4;
- order *restitutio in integrum* in respect of Community trade mark No 339 218; and
- order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The figurative mark consisting of a representation of a dog for goods in classes 16, 18, and 25 — Community trade mark No 339 218

Decision of the Trade Marks and Register Department: Refusal of the application for *restitutio in integrum*

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 47 of Council Regulation No 40/94 as renewal of the Community trade mark is permitted not only to the proprietor of such or to its professional representative; the Board of Appeal erred in law and in its assessment of the facts in holding that the Applicant and its authorised representative had failed to exercise due care in the circumstances; the Board of Appeal erred in law in holding that it was careless of the Applicant to appoint Computer Patent Annuities Limited, a trade marks renewals agency, to renew its marks.

— order the European Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the declaration that the Commission failed to annul the decision taken by the Office for Harmonisation in the Internal Market (OHIM) awarding multiple framework contracts under the tender procedure AO/026/06 of the OHIM on 'E-Alicante: consultancy services, audits and studies' ⁽¹⁾ and that it has failed to terminate the corresponding specific contracts under the framework.

The pleas in law and main arguments raised by the applicant are identical to those raised in Case T-176/08 *Infeurope v Commission*.

⁽¹⁾ OJ 2006/S 210-223510.

Action brought on 13 May 2008 — Infeurope v Commission

(Case T-188/08)

(2008/C 171/91)

Language of the case: English

Parties

Applicant: Infeurope SA (Luxembourg, Luxembourg) (represented by: O. Mader, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- declare that the European Commission has failed to annul the decision of awarding the framework contracts under the call for tenders procedure AO/026/06 of the OHIM on consultancy services, audits and studies;
- declare that the European Commission has failed to terminate the specific contracts concluded under the said framework contracts;
- order the European Commission to pay to the applicant the sum of EUR 35 950 plus 4 % interest on the amount of EUR 33 050 from 19 December 2006, plus 4 % interest on the amount of EUR 2 900 from 14 December 2007; respectively 8 % interest on sum of EUR 35 950 from the date of judgment;
- order the European Commission to pay to the applicant the sum of EUR 646 631,27, plus 4 % interest on the said sum from 14 May 2008, respectively 8 % interest on the said sum from the date of judgment;
- order the European Commission to produce certain documents relating to the procedure for evaluating the tenders;

Order of the Court of First Instance of 7 May 2008 — Germany and Deutsche Post v Commission

(Case T-490/04 and T-493/04) ⁽¹⁾

(2008/C 171/92)

Language of the case: German

The President of the Court of First Instance (Seventh Chamber) has ordered that the case be removed from the register.

⁽¹⁾ OJ C 31, 5.2.2005.

Order of the Court of First Instance of 5 May 2008 — Fränkischer Weinbauverband v OHIM (three-dimensional mark 'Bocksbeutel')

(Case T-180/06) ⁽¹⁾

(2008/C 171/93)

Language of the case: German

The President of the Fifth Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 212, 2.9.2006.