

Action brought on 15 July 2008 — Al-Aqsa v Council**(Case T-276/08)**

(2008/C 236/25)

*Language of the case: Dutch***Parties**

Applicant: Al-Aqsa (Heerlen, Netherlands) (represented by: J. Pauw and M. Uiterwaal, lawyers)

Defendant: Council of the European Union

Form of order sought

- declare that the Council is under an obligation to compensate the applicant for the damage which it has suffered, in the amount of EUR 10 600 000, plus interest to be calculated up to the date of judgment in the present case, or at least such compensation as the Court may determine;
- order the Council to pay the costs of these proceedings.

Pleas in law and main arguments

The applicant is seeking compensation in respect of the damage which it claims to have suffered by reason of the fact that Council Decision 2003/480/EC of 27 June 2003 ⁽¹⁾ placed it on the list of persons to whom Regulation (EC) No 2580/2001 ⁽²⁾ is to apply. The applicant's inclusion on the list has subsequently been confirmed on the occasion of each update.

The applicant contends that these decisions are unlawful for a variety of reasons. The applicant first points out that Decision 2006/379/EC of 29 May 2006 ⁽³⁾ was annulled by the Court on the ground that it failed to meet the requirement of an adequate statement of reasons ⁽⁴⁾. The applicant contends further that the decisions are vitiated by a number of substantive defects, and refers in this connection to its pleas in law in Cases T-327/03 and T-348/07 *Al-Aqsa v Council* ⁽⁵⁾.

In issue here, according to the applicant, are sufficiently serious breaches of rights conferred on individuals as accordingly to justify the award of compensation. The damage suffered by the applicant involves both damage to its reputation and

non-material damage, in respect of which the Council has been liable since 28 June 2003, that being the date on which the European measures entered into force.

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- ⁽¹⁾ Council Decision 2003/480/EC of 27 June 2003 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/974/EC (OJ 2003 L 160, p. 81).
- ⁽²⁾ Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70).
- ⁽³⁾ Council Decision 2006/379/EC of 29 May 2006 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2005/930/EC (OJ 2006 L 144, p. 21).
- ⁽⁴⁾ Judgment of the Court of First Instance of 11 July 2007 in Case T-327/03 *Al-Aqsa v Council*.
- ⁽⁵⁾ OJ 2003 C 289, p. 30, and OJ 2007 C 269, p. 61, respectively.

Action brought on 15 July 2008 — Bayer Healthcare v OHIM — Laboratorios ERN (CITRACAL)**(Case T-277/08)**

(2008/C 236/26)

*Language in which the application was lodged: English***Parties**

Applicant: Bayer Healthcare LLC (Morristown, United States) (represented by: M. Edenborough, barrister)

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

Other party to the proceedings before the Board of Appeal: Laboratorios ERN, SA (Sant Just Desvern, Spain)

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 5 May 2008 in case R 459/2007-4; and
- Order the defendant or alternatively the other party to the proceedings before the Board of Appeal to pay the costs. As a further alternative, to order the defendant and the other party to the proceedings before the Board of Appeal to be liable jointly and severally for the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant (formerly Mission Pharmacal Company)

Community trade mark concerned: The word mark 'CITRACAL' for goods in class 5, application No 1 757 855

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal (formerly Laboratorios Diviser-Aquilea, SL)

Mark or sign cited: Spanish trade mark registration No 223 532 of the mark 'CICATRAL' for goods in classes 1 and 5

Decision of the Opposition Division: Uphold the opposition with respect to all the contested goods

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The Board of Appeal erred in its assessment of the evidence of proof-of-use, and in particular on the issue of the provision of a suitable translation of the goods in relation to which the mark cited in the opposition proceedings was used. Further, the Board of Appeal erred in its assessment of the existence of a likelihood of confusion between the conflicting trade marks.

Action brought on 21 July 2008 — People's Mojahedin of Iran v Council**(Case T-284/08)**

(2008/C 236/27)

*Language of the case: English***Parties**

Applicant: People's Mojahedin Organization of Iran (Auvers sur Oise, France) (represented by: J.-P. Spitzer, lawyer and D. Vaughan, QC)

Defendant: Council of the European Union

Form of order sought

- To annul Decision 2008/583/EC of the Council insofar as it applies to the applicant;
- To order the defendant to pay the applicant's costs.

Pleas in law and main arguments

The applicant seeks, pursuant to Article 230 EC, partial annulment and in so far as it concerns the applicant, of Council Decision 2008/583/EC of 15 July 2008 ⁽¹⁾ ('the contested decision')

implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2007/868/EC.

In support of its application, the applicant submits that the contested decision should be annulled because, in so far as it relates to the inclusion of the applicant on the list of terrorist organisations, there was no relevant decision at the time from a competent national authority sufficient to form any justification for the decision. In addition, the applicant claims that the decision should be annulled because while it was said to be based on 'new information' and on a decision from a competent authority other than that of the United Kingdom, the evidence on which the Council relied was not disclosed to the applicant before adopting the decision. Further, the applicant claims that no justification was given as to why such information was to be treated as new, or relevant.

The applicant puts forward that the contested decision was taken without any proper evaluation of the new information and on whether that constituted concrete and reliable evidence upon which the Council was entitled to act, in order to prove that the applicant was engaged in terrorism.

Furthermore, the applicant contends that the contested decision was adopted in violation of the applicant's right to be heard and its fundamental rights. The applicant submits, finally, that the contested decision was adopted in circumstances which amounted to an abuse or misuse of procedures and/or powers.

⁽¹⁾ OJ 2008 L 188, p. 21.

Action brought on 23 July 2008 — Inditex v OHIM**(Case T-292/08)**

(2008/C 236/28)

*Language in which the application was lodged: Spanish***Parties**

Applicant: Industria de Diseño Textil, SA (Inditex) (Arteixo, Spain) (represented by: E. Armijo Chávarri and A. Castán Pérez-Gómez, 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: Roberto Fernando Marín Díaz de Cerio (Logroño, Spain)