

Ninth, the commitments in the areas covered were furthermore incapable of ensuring effective competition.

Tenth, the applicant's right to a fair hearing was infringed by procedural errors.

⁽¹⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1).

Action brought on 27 August 2008 — Peek & Cloppenburg and van Graaf v OHIM — Thailand (Thai Silk)

(Case T-361/08)

(2008/C 301/71)

Language in which the application was lodged: German

Parties

Applicants: Peek & Cloppenburg (Hamburg, Germany) and van Graaf GmbH & Co. KG (Vienna, Austria) (represented by: V. von Bombard, A. Renck, T. Dolde and J. Pause, 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: Thailand

Form of order sought

— annulment of the Decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) No R 1677/2007-4 of 10 June 2008

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Thailand

Community trade mark concerned: The figurative trade mark 'Thai Silk' with the colours 'dark blue and white' for goods in Classes 24 and 25 (Registration No 4 099 297)

Proprietor of the mark or sign cited in the opposition proceedings: the Applicants

Mark or sign cited in opposition: Representation of a black and white peacock for goods and services in Classes 18, 25 and 35.

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Rejection of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as there is a likelihood of confusion between the trade marks at issue due to their similar overall impression.

Action brought on 28 August 2008 — IFAW Internationaler Tierschutz-Fonds v Commission

(Case T-362/08)

(2008/C 301/72)

Language of the case: English

Parties

Applicant: IFAW Internationaler Tierschutz-Fonds gGmbH (Hamburg, Germany) (represented by: S. Crosby and S. Santoro, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— To order the Commission to produce to the Court the letter from Mr Schröder, German Chancellor, of 15 March 2000 to Mr Prodi, President of the Commission;

— To find that the contested decision is vitiated by an error of law and by manifest errors of assessment and to annul it accordingly; and

— To order the Commission to pay the applicant's costs pursuant to Article 87 of the Rules of procedure of the Court of First Instance.

Pleas in law and main arguments

By judgment of 18 December 2007 in Case C-64/05 P ⁽¹⁾, the Court of Justice set aside the judgment of the Court of First Instance of 30 November 2004 in Case T-168/02 *IFAW Internationaler Tierschutz-Fonds v Commission* [2004] ECR 1435, annulling the Commission's decision of 26 March 2002 which had refused access to the documents requested by the applicant by application of 20 December 2001, concerning the declassification of the Elbe site in Hamburg, a nature reserve, protected by the Natura 2000 scheme, as established by Council Directive 92/43/EEC ⁽²⁾, for the expansion of the existing Daimler Chrysler Aerospace GmbH plant for the final assembly of the Airbus A3XX. As a consequence, in the light of the Court's judgment on appeal, the applicant, by letter of 13 February 2008, renewed its application for access to the requested documents and made a confirmatory application, in accordance with Article 7(4) of Regulation (EC) No 1049/2001 ⁽³⁾ on 29 April 2008.

By means of the present application, the applicant seeks, pursuant to Article 230 EC, the annulment of the Commission's decision of 19 June 2008, granting partial access to its request and refusing to allow access to one of the documents for which the applicant applied under Regulation (EC) No 1049/2001 of the European Parliament and of the Council.

The applicant claims that the Commission committed an error of law by applying Article 4(1)(a), third indent of Regulation (EC) No 1049/2001 to a purely intra-EU relationship. Moreover, the applicant submits that the Commission committed a manifest error of law in considering that the content of Mr Schröder's letter was confidential to such an extent that its disclosure would jeopardise the economic policy of Germany and other EU Member States. Further, the applicant contends that the Commission committed manifest errors of assessment in considering that the disclosure of the letter would compromise the decision-making process and, finally, by not considering public interest as overriding the confidential nature of its decision-making process.

⁽¹⁾ Case C-64/05 P *Kingdom of Sweden v Commission* [2007] ECR I 11389.

⁽²⁾ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

⁽³⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 2 September 2008 — Federcoopesca and Others v Commission

(Case T-366/08)

(2008/C 301/73)

Language of the case: Italian

Parties

Applicants: Federazione Nazionale delle Cooperative della Pesca (Federcoopesca) (Rome, Italy); Pappalardo (Cetara, Italy); Pescatori La Tonnara (Cetara, Italy); Fedemar (Cetara, Italy); I Ciclopi di Tudisco Matteo (Catania, Italy); Testa (Catania, Italy); Pescatori San Pietro Apostolo, Camplone (Pescara, Italy), and Pesca (Pescara, Italy) (represented by: P. Cavatola, V. Cannizzaro and G. Micucci, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul Commission Regulation (EC) No 530/2008 of 12 June 2008 establishing emergency measures as regards purse

seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and in the Mediterranean Sea;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and principal arguments are similar to those relied on in Case T-305/08 *Italian Republic v Commission* and Case T-313/08 *Veromar di Tudisco Alfio & Salvatore snc v Commission*.

Action brought on 26 August 2008 — Atlantean v Commission

(Case T-368/08)

(2008/C 301/74)

Language of the case: English

Parties

Applicant: Atlantean Ltd (Killybegs, Ireland) (represented by: M. Fraser, D. Hennessy, Solicitors, G. Hogan SC, E. Regan, and C. Toland, Barristers)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision C(2008) 3236 of 26 June 2008 addressed to Ireland responding to the request by Ireland concerning the Atlantean;

— Order the Commission to pay the applicant's costs of these proceedings.

Pleas in law and main arguments

In the present case, the applicant is bringing an action for partial annulment of Commission Decision C(2008) 3236 final of 26 June 2008 which provided for the rejection of the request by Ireland in respect of the applicant's vessel Atlantean to increase capacity under the fourth multi-annual guidance programme (MAGP IV) applicable for the reasons of improvements in safety, navigation at sea, hygiene, product quality and working conditions for vessels of more than 12 m in length overall. The first Commission Decision 2003/245/EC of 4 April 2003 ⁽¹⁾ rejecting the request by Ireland was annulled by the Court's judgment of 13 June 2006 in so far as it applied to the applicant's vessel Atlantean ⁽²⁾.