

Decision of the Opposition Division: Allowed the opposition in its entirety

Decision of the Board of Appeal: Annulled the contested decision and dismissed the opposition

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal wrongly assessed that there was no likelihood of confusion between the trade marks concerned; Infringement of Article 8(5) of Council Regulation 40/94 as the Board of Appeal failed to find that the trade mark cited in the opposition proceedings has reputation in the United Kingdom.

Action brought on 30 December 2008 — Carpent Languages v Commission

(Case T-582/08)

(2009/C 69/96)

Language of the case: French

Parties

Applicant: Carpent Languages SPRL (Brussels, Belgium) (represented by: P. Goergen, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Declare the action admissible and well founded;
- Accordingly, annul the decision to reject the applicant's tender;
- Annul the decision awarding the contract to ADIE TECH-NICS SPRL;
- In the alternative, in the event that the Court does not grant the application for annulment of the contested decision, order the Commission to pay the applicant the sum of EUR 200 000 (two hundred thousand Euros) as compensation for the applicant's pecuniary and non-pecuniary losses;
- Order the Commission of the European Communities to pay all the costs.

Pleas in law and main arguments

The applicant contests the decision of the Commission to reject its tender made in respect of the call for tenders for lot No 4 of the contract notice 'Multiple framework contracts for meeting and conference organisation services' (OJ 2008 S 58-77561), and the decision to award the contract to another tenderer. The applicant also seeks compensation for the loss allegedly caused by the contested decision.

In support of its action, the applicant raises three pleas in law, alleging:

- breach of the duty to state reasons, since the Commission stated neither the number of points obtained by the successful tenderer nor the advantages of the successful tender over that of the applicant; furthermore, the Commission did not inform the applicant which of the two case studies which it submitted did not obtain a sufficient number of points;
- a manifest error of assessment, in that the Evaluation Committee attributed a score of less than 70 points to one of the case studies submitted by the applicant despite the fact that the applicant set out in detail, in accordance with the specifications, the approach which it would have taken to supply the services required, the means which it would have allocated to the different tasks, the work schedule and an estimate of the costs;
- a breach of the principles of equal treatment and non-discrimination as defined in Article 89(1) of the Financial Regulation, since the successful tenderer did not fulfil the selection criteria in respect of technical capacity.

Action brought on 22 December 2008 — Evropaiki Dynamiki v Commission

(Case T-589/08)

(2009/C 69/97)

Language of the case: English

Parties

Applicant: Evropaiki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis, P. Katsimani, M. Dermizakis, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- annul the decisions of the Commission to evaluate the applicant's bids as not successful and award the contracts to the successful contractor;
- order the Commission to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of 920 000 EUR to be increased up to 1 700 000 EUR depending on the final amount of the CITL project;
- order the Commission to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

In the present case the applicant seeks the annulment of the defendant's decisions to reject its bids submitted in response to a call for an open tender ENV.C2/FRA/2008/0017 regarding the 'Emission Trading Scheme — CITL/CR' ⁽¹⁾ and to award the contract to the successful contractor. The applicant further requests compensation for the alleged damages in account of the tender procedure.

In support of its claims the applicant puts forward two pleas in law.

First, it argues that the Commission committed several manifest errors of assessment while evaluating the three bids submitted by the applicant to the three Lots of the tender respectively.

Second, the applicant submits that the Commission failed to observe the principles of transparency and equal treatment and therefore infringed relevant provisions reflecting these principles such as Articles 92 and 100 of the financial regulation ⁽²⁾. Moreover, the applicant argues that the contracting authority infringed its obligation to sufficiently state reasons for its decision. It claims as well that the Commission failed to provide it with additional information that it requested after the award decision regarding the merits of the successful tenderer. Furthermore, the applicant submits that the contracting authority applied criteria that were not set out in advance and thus were unknown to the candidates.

⁽¹⁾ OJ 2008/S 72-096229.

⁽²⁾ 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 L 248, p. 1).

Action brought on 5 January 2009 — Dornbracht v OHIM — Metaform Lucchese (META)

(Case T-1/09)

(2009/C 69/98)

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

Applicant: Aloys F. Dornbracht GmbH & Co. KG (Iserlohn, Germany) (represented by: P. Mes, C. Graf von der Groeben, G. Rother, J. Bühling, A. Verhauwen, J. Künzel, D. Jestaedt and M. Bergermann, 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: Metaform Lucchese SpA (Monsagrati, Italy)

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 Design) of 3 November 2008 (R 1152/2006-4);
- Order the defendant to pay the costs including those costs incurred before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: Aloys F. Dornbracht GmbH & Co. KG.

Community trade mark concerned: the word mark 'META' for goods in Classes 9, 11, 20 and 21 (Application No 3 081 271).

Proprietor of the mark or sign cited in the opposition proceedings: Metaform Lucchese SpA.

Mark or sign cited in opposition: the figurative mark 'METAFORM' for goods in Classes 6, 11, 20, 21 and 24 (Community trade mark No 1 765 361), the Italian figurative mark (Trade mark No 587 108) and the international figurative mark (Trade mark No 603 054) also for goods in Classes 6, 11, 20, 21 and 24.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 ⁽¹⁾, in that there is no likelihood of confusion between the marks at issue.

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