

Operative part of the judgment

The Court:

1. *dismisses the action;*
2. *orders the Kingdom of Spain to pay the costs.*

(¹) OJ C 107, 26.4.2008.

Judgment of the General Court of 24 November 2010 — Marcuccio v Commission

(Case T-9/09 P) (¹)

(Appeal — Staff cases — Officials — Dismissal of the action at first instance as manifestly inadmissible — Request for the return of personal property — Notification of the decision rejecting the complaint in a language other than that of the complaint — Action out of time — No response to a head of claim submitted at first instance)

(2011/C 13/45)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Other party to the proceedings: European Commission (represented by: J. Currall and C. Berardis-Kayser, acting as Agents, assisted by A. Dal Ferro, lawyer)

Re:

Appeal against the order of the Civil Service Tribunal of the European Union (First Chamber) of 4 November 2008 in Case F-133/06 *Marcuccio v Commission*, not yet published in the ECR, seeking the annulment of that order

Operative part of the judgment

The Court:

1. *annuls the order of the Civil Service Tribunal of the European Union (First Chamber) of 4 November 2008 in Case F-133/06 Marcuccio v Commission, not yet published in the ECR, in so far as it did not rule on the application for a declaration that the decision contested at first instance did not exist;*
2. *dismisses the appeal as to the remainder;*
3. *dismisses the action inasmuch as it sought a declaration that the contested decision did not exist;*
4. *orders Mr Luigi Marcuccio to bear his own costs and to pay those incurred by the European Commission in the present case. The costs of the proceedings at first instance which culminated in the above order in Marcuccio v Commission are to be borne in accordance with point 2 of the operative part of that order.*

(¹) OJ C 55, 7.3.2009.

Judgment of the General Court of 24 November 2010 — Nike International v OHIM — Muñoz Molina (R10)

(Case T-137/09) (¹)

(Community trade mark — Opposition proceedings — Application for Community word mark R10 — Non-registered national word mark R10 — Assignment of the national mark — Procedural defect)

(2011/C 13/46)

Language of the case: Spanish

Parties

Applicant: Nike International Ltd (Beaverton, Oregon, United States) (represented by: M. de Justo Bailey, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Crespo Carillo, Agent)

Other party to the proceedings before the Board of Appeal of OHIM: Aurelio Muñoz Molina (Petrer, Spain)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 21 January 2009 (Case R 551/2008-1) relating to opposition proceedings between DL Sports & Marketing Ltda and Mr Aurelio Muñoz Molina.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 21 January 2009 (Case R 551/2008-1);*
2. *Dismisses the remainder of the action;*
3. *Orders each party to bear its own costs.*

(¹) OJ C 129, 6.6.2009.

Judgment of the General Court of 10 November 2010 — OHIM v Simões Dos Santos

(Case T-260/09) (¹)

(Appeal — Cross-appeal — Civil service — Officials — Promotion — 2003 promotion procedure — Merit points reset at zero and their total recalculated — Compliance with a judgment of the General Court — Res judicata — Legal basis — Non-retroactivity — Legitimate expectation — Material damage — Loss of opportunity for promotion — Non-material damage)

(2011/C 13/47)

Language of the case: French

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: I. de Medrano Caballero, agent, and D. Waelbroeck, lawyer)

Other party to the proceedings: Simões Dos Santos (Alicante, Spain) (represented by: A. Creus Carreras, lawyer)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 5 May 2009 in Case F-27/08 *Simões Dos Santos v OHIM*, not published in the ECR, seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. Paragraphs 2 to 25 of the operative part of the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 5 May 2009 in Case F-27/08 *Simões Dos Santos v OHIM* are annulled.
2. The main appeal and the cross appeal are dismissed as to the remainder.
3. The case is referred back to the Civil Service Tribunal.
4. The costs are reserved.

(¹) OJ C 220, 12.9.2009.

Judgment of the General Court of 12 November 2010 — Deutsche Bahn v OHIM (Horizontal combination of the colours grey and red)

(Case T-404/09) (¹)

(Community trade mark — Application for Community trade mark consisting in a horizontal combination of the colours grey and red — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2011/C 13/48)

Language of the case: German

Parties

Applicant: Deutsche Bahn AG (Berlin, Germany) (represented by: U. Hildebrandt, K. Schmidt-Hern and B. Weichhaus, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 July 2009 (Case R 379/2009-1) concerning an application for registration of a colour sign, consisting in the combination of the colours grey and red, as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action.

2. Orders Deutsche Bahn AG to pay the costs.

(¹) OJ C 297, 5.12.2009.

Judgment of the General Court of 12 November 2010 — Deutsche Bahn v OHIM (Vertical combination of the colours grey and red)

(Case T-405/09) (¹)

(Community trade mark — Application for Community trade mark consisting in a vertical combination of the colours grey and red — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2011/C 13/49)

Language of the case: German

Parties

Applicant: Deutsche Bahn AG (Berlin, Germany) (represented by: U. Hildebrandt, K. Schmidt-Hern and B. Weichhaus, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 July 2009 (Case R 372/2009-1) concerning an application for registration of a colour sign, consisting in the combination of the colours grey and red, as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action.
2. Orders Deutsche Bahn AG to pay the costs.

(¹) OJ C 297, 5.12.2009.

Order of the General Court of 17 November 2010 — Victoria Sánchez v Parliament and Commission

(Case T-61/10) (¹)

(Action for failure to act — Failure to adopt measures — Application for directions to be issued — Request for protective measures — Action in part manifestly inadmissible and in part manifestly devoid of any basis in law)

(2011/C 13/50)

Language of the case: Spanish

Parties

Applicant: Fernando Marcelino Victoria Sánchez (Seville, Spain) (represented by: initially, N. Domínguez Varela and, subsequently, P. Suarez Plácido, lawyers)