

## GENERAL COURT

**Judgment of the General Court of 18 January 2011 — Advance Magazine Publishers v OHIM Capela & Irmãos (VOGUE)**(Case T-382/08) <sup>(1)</sup>

**(Community trade mark — Opposition proceedings — Application for Community word mark VOGUE — Earlier national word mark VOGUE Portugal — Absence of genuine use of the earlier mark — Article 43(2) and (3) of Regulation (EC) No 40/94 (now Article 42(2) and (3) of Regulation (EC) No 207/2009))**

(2011/C 63/49)

Language of the case: English

**Parties**

**Applicant:** Advance Magazine Publishers Inc. (New York, United States) (represented by: M. Esteve Sanz, lawyer)

**Defendant:** Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, Agent)

**Other party to the proceedings before the Board of Appeal of OHIM:** J. Capela & Irmãos, L<sup>da</sup> (Porto, Portugal)

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 30 June 2008 (Case R 328/2003-2) relating to opposition proceedings between J. Capela & Irmãos, L<sup>da</sup> and Advance Magazine Publishers, Inc.

**Operative part of the judgment**

The Court:

1. Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 30 June 2008 (Case R 328/2003-2);
2. Dismisses the action as to the remainder;
3. Orders OHIM to bear its own costs and those incurred by Advance Magazine Publishers, Inc.

<sup>(1)</sup> OJ C 301, 22.11.2008.

**Judgment of the General Court of 19 January 2011 — Häfele v OHIM — Topcom Europe (Topcom)**(Case T-336/09) <sup>(1)</sup>

**(Community trade mark — Opposition proceedings — Application for Community word mark Topcom — Earlier Community and Benelux word marks TOPCOM — Relative ground for refusal — Likelihood of confusion — Similarity of the goods — Article 8(1)(b) of Regulation (EC) No 207/2009)**

(2011/C 63/50)

Language of the case: English

**Parties**

**Applicant:** Häfele GmbH & Co. KG (Nagold, Germany) (represented by: J. Dönch and M. Eck, lawyers)

**Defendant:** Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, Agent)

**Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court:** Topcom Europe (Heverlee, Belgium) (represented by: P. Maeyaert, lawyer)

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 5 June 2009 (Case R 1500/2008-2), concerning opposition proceedings between Topcom Europe NV and Häfele GmbH & Co. KG.

**Operative part of the judgment**

The Court:

1. Dismisses the action;
2. Orders Häfele GmbH & Co. KG to pay the costs, including the costs necessarily incurred by Topcom Europe NV for the purposes of the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).

<sup>(1)</sup> OJ C 256, 24.10.2009.

**Order of the General Court of 12 January 2011 — Terezakis v Commission**(Case T-411/09) <sup>(1)</sup>

**(Access to documents — Regulation (EC) No 1049/2001 — Partial refusal of access — Contested act replaced in the course of the proceedings — Refusal to amend the claims — No need to adjudicate)**

(2011/C 63/51)

Language of the case: English

**Parties**

**Applicant:** Ioannis Terezakis (Brussels, Belgium) (represented by: initially B. Lombart, then P. Synoikis, lawyers)

**Defendant:** European Commission (represented by: L. Flynn and C. ten Dam, Agents)

**Re:**

APPLICATION for annulment of the Commission's decision of 3 August 2009 refusing the applicant access to some parts of, and the annexes to, certain letters exchanged between the European Anti-Fraud Office (OLAF) and the Greek Ministry of Finance regarding tax irregularities in connection with the construction of Spata airport at Athens (Greece)

**Operative part of the order**

1. *There is no need to adjudicate on the action.*
2. *The parties shall bear their own costs.*

(<sup>1</sup>) OJ C 312, 19.12.2009.

**Appeal brought on 10 December 2010 by Patrizia De Luca against the judgment of the Civil Service Tribunal delivered on 30 September 2010 in Case F-20/06, De Luca v Commission**

(Case T-563/10 P)

(2011/C 63/52)

*Language of the case: French*

**Parties**

*Appellant:* Patrizia De Luca (Brussels, Belgium) (represented by: S. Orlandi and J.-N. Louis, lawyers)

*Other parties to the proceedings:* European Commission and Council of the European Union

**Forms of order sought by the appellant**

The appellant claims that the Court should:

- set aside the judgment of the Civil Service Tribunal delivered on 30 September 2010 (Case F-20/06 De Luca v Commission) dismissing the appellant's application;
- giving judgment itself,
  - annul the decision of 23 February 2005 of the Commission of the European Communities appointing the applicant to a post as an administrator, in so far as it sets her classification at grade A\*9 step 2;
  - order the Commission of the European Communities to pay the costs.

**Pleas in law and main arguments**

In support of the appeal, the appellant puts forward two pleas in law.

1. First plea in law alleging an error of law in that it was ruled that Article 12(3) of Annex XIII to the Staff Regulations of officials of the European Union applied whereas that provision applies only to 'recruitment' of officials and the applicant was already an official at the time of her appointment.
  - The appellant claims that by ruling that that provision was applicable, the CST misunderstood the material scope of Article 12(3) of Annex XIII to the Regulations, infringing the rule of interpretation according to which transitional legislative provisions must be interpreted strictly.

2. Second plea in law alleging an error of law in that the objection of illegality of Article 12(3) of Annex XIII to the Staff Regulations was rejected.
  - the appellant claims that the application of that provision results in an infringement of the fundamental principle of equal treatment of officials and the principle of entitlement to reasonable career prospects, inasmuch as the appellant was downgraded after passing a higher level competition whereas successful candidates in the internal competition of grade B\*10 were treated more favourably in that their classification was set at grade A\*10.
  - The appellant further claims that the CST erred in law in finding that an objection of illegality in respect of Articles 5(2) and 12(3) of Annex XIII to the Staff Regulations had not been raised implicitly on the basis of the plea in law alleging infringement of the principles of equal treatment, proportionality and the obligation to state reasons.

**Action brought on 17 December 2010 — Environmental Manufacturing v OHIM — Wolf (Representation of the head of a wolf)**

(Case T-570/10)

(2011/C 63/53)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Environmental Manufacturing LLP (Stowmarket, United Kingdom) (represented by: S. Malynicz, barrister, and M. Atkins, solicitor)

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

*Other party to the proceedings before the Board of Appeal:* Société Elmar Wolf, SAS (Wissembourg, France)

**Form of order sought**

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 October 2010 in case R 425/2010-2; and
- Order the defendant and the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant