Action brought on 30 March 2009 — B Antonio Basile 1952 and I Marchi Italiani v OHIM

(Case T-134/09)

(2009/C 141/100)

Language in which the application was lodged: Italian

Parties

Applicants: B Antonio Basile 1952 (Giugliano, Italy) and I Marchi Italiani (Naples, Italy) (represented by: G. Militerni, lawyer)

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

Other party/parties to the proceedings before the Board of Appeal of OHIM: Osra SA (Rovereta, Italy)

Form of order sought

— Annul the decision of the Second Board of Appeal dated 09.01.2009, notified to the applicants in the present case on 30.01.2009 in proceedings R 1436/2007-2, between Antonio Basile, operating as a sole proprietorship 'B Antonio Basile 1952' and Osra S.A., which upheld the decision of the Cancellation Division, which allowed the application for revocation and declaration of invalidity of the mark 'B Antonio Basile 1952', following the action brought by Osra S.A.;

— Declare the registration of the mark 'B Antonio Basile 1952' to be valid and effective as from the date of filing of the application and/or registration of that mark;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Figurative mark containing the wording 'B Antonio Basile 1952' (Community trade mark application No 1 462 555), for goods in Classes 14, 18 and 25

Proprietor of the Community trade mark: The applicants.

Applicant for the declaration of invalidity: Osra S.A.

Trade mark right of applicant for the declaration: Word mark 'BASILE' (Italian registration No 287 030 and international registration No R 413 396 B) for goods in Class 25.

Decision of the Cancellation Division: Declared the trade mark in question to be partially invalid in relation to goods in Class 25.

Decision of the Board of Appeal: Dismissed the appeal.

Pleas in law: The grounds put forward in the present action are the same as those in Case T-133/09.

Action brought on 7 April 2009 — Nexans France and Nexans v Commission

(Case T-135/09)

(2009/C 141/101)

Language of the case: English

Parties

Applicants: Nexans France SAS and Nexans SA (Paris, France) (represented by: M. Powell, Solicitor and J.-P. Tran Thiet, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the Commission's decision of 9 January 2009 — Case COMP/39610 — Surge;

— declare unlawful the Commission's decision to remove four DVD-ROMs and a copy of the whole hard drive of the laptop of an employee of Nexans France, for review at its premises in Brussels at a later date;

— annul the Commission's decision to interview a Nexans France employee on 30 January 2009;

— order the Commission to return to Nexans France any documents or evidence which it might have obtained pursuant to the annulled decisions, including without limitation: (a) documents outside the proper product scope of the dawn raid; (b) documents relating to electrical cable projects located outside the European Economic Area; (c) documents seized improperly from the hard drive and DVD-ROMs; and (d) statements created during or based on interviews of the Nexans France employee;

— order the Commission to refrain from using, for the purposes of proceedings in respect of an infringement of the Community competition rules, any documents or evidence which it might have obtained pursuant to the annulled decisions;

— order the Commission to refrain from transmitting such documents or evidence (or derivatives or information based thereon) to competition authorities in other jurisdictions;

— order the Commission to pay the costs of the proceedings;

— take such other or further steps as justice may require.

Pleas in law and main arguments

In the present case, the applicants seek the annulment of Commission decision C(2009) 92/1 of 9 January 2009 ordering Nexans SA and all companies directly or indirectly controlled by it, including Nexans France SAS to submit to an inspection in accordance with Article 20, paragraph 4 of Council Regulation 1/2003 ([1]) (Case COMP/39610-Surge) as well as the way in which it was executed.

In support of its claims, the applicants argue that the contested decision is in breach of the applicants' fundamental rights, including the rights of defence, the right to a fair legal process, the privilege against self-incrimination and the presumption of innocence and right to privacy. Furthermore, they submit that in the execution of the contested decision the Commission went beyond the scope of the investigation.

(1) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty; OJ L 1, p. 1

Action brought on 7 April 2009 — Commission v Galor

(Case T-136/09)

(2009/C 141/102)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: A.-M. Rouchaud-Joët, F. Mirza, agents, assisted by B. Katan and M. van der Woude, lawyers)

Defendant: Benjamin Galor (Jupiter, United States of America)

Form of order sought

— order Galor to pay the Community EUR 205 611, to be increased by the statutory interest pursuant to Article 6 119 DCC as of 1 March 2003 up to the date the Community will have received full payment;

— order Galor to pay the Community the statutory interest pursuant to Article 6.119 DCC on EUR 9 231,25 as of 2 September 2003 (or, alternatively, as of 10 March 2007) up to the date the Community will have received full payment;

— order Galor to pay the costs of the current proceedings, provisionally estimated at EUR 17 900, to be increased by the statutory interest pursuant to Article 6.119 DCC as of the date of judgment up to the date the Community will have received full payment.

Pleas in law and main arguments

On 23 December 1997 the European Community, represented by the Commission, entered into a contract IN/004/97 with Prof. Benjamin Galor and three companies for the implementation of the project 'Self-Upgrading of Old-Design Gas Turbines in Land & Marine Industries by Energy-Saving Clean Jet-Engine Technologies' under the Community activities in the field of non-nuclear energy (1). Pursuant to the contract provision, the Commission made an advance payment of its contribution for the project to the contractors. The payment was received by the leader of the project, Prof. Benjamin Galor.

For reasons related to the difficulties for the contractors to find an associated contractor for the project and because no progress had been made in the implementation of the project, the Commission decided to terminate the contract. In its letter to the contractors, the Commission specified that the Community contribution could only be paid (or kept by the contractors) as far as it was related to the project and justified through the final technical and financial report.

The final report submitted by the contractors was not approved by the Commission and the Commission started the procedure for recovering the advance payment.

In its application, the Commission submits that the defendant did not reimburse the amount received, but instead demanded that the Commission pays him a foreseen contribution under the contract minus the advance payment. Furthermore, the defendant started legal proceedings before the Dutch courts to recover this amount. The jurisdiction of the Dutch courts was disputed by the Commission on the basis of the jurisdiction clause in the contract designating the Court of First Instance to decide on any disputes between the contracting parties.

In its application, the Commission seeks the recovery of the advance paid. The Commission claims that it was entitled to terminate the contract in application of the contract's provisions as the defendant acted in breach of his contractual obligations because, inter alia: there was an important delay in commencement of the project and the project showed no progress, the defendant was not able to engage technical means required for the research that the funding had been provided for and the technical and financial reports did not meet the contractual requirements.

Therefore, the Commission contends that it is entitled to demand reimbursement of the advance payment.

(1) Council Decision 94/806/EC of 23 November 1994 adopting a specific programme for research and technological development, including demonstration, in the field of non-nuclear energy (1994 to 1998) OJ 1994 L 334, p. 87

Action brought on 8 April 2009 — France v Commission

(Case T-139/09)

(2009/C 141/103)

Language of the case: French

Parties

Applicant: French Republic (represented by: E. Belliard, G. de Bergues and A.-L. During, Agents)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision C(2009) 2003 final of 28 January 2009 on the contingency plans in the fruit and vegetable sector implemented by France, in so far as it refers to the part of the measures taken under the contingency plans which was financed by sectoral contributions;

— In the alternative, were the Court to find that application for partial annulment inadmissible, annul Decision C(2009) 2003 final in its entirety;

— Order the Commission to pay the costs.