

Form of order sought

- Acknowledge receipt of the application (application, authority to represent the applicant, together with copies and documents) and declare it admissible;
- examine the application lodged for and on behalf of CEA by its legal representatives;
- pursuant to Article 230 EC, annul the Commission's decision — notified to CEA by a letter dated 29 July 2009 — refusing to treat the 'indemnités de départ à la retraite' (retirement allowances; 'IDR') paid by CEA as eligible indirect costs and to grant CEA a certificate on the accounting methodology;
- in the alternative, declare, pursuant to Article 238 EC, (i) that the IDR is an eligible cost in accordance with the contractual provisions of the 7th Research Framework Programme, and (ii) that the European Community has failed to comply with its contractual commitments towards CEA in relation to the 7th Research Framework Programme;
- order the Commission to pay the costs.

Pleas in law and main arguments

Principally, by its action on the basis of Article 230 EC, the Commissariat à l'énergie atomique (CEA) seeks the annulment of the Commission's final decision, notified to CEA on 29 July 2009, refusing to treat the retirement allowances paid by CEA as eligible indirect costs and to grant CEA a certificate on the accounting methodology so that it can declare its indirect personnel costs in order to obtain reimbursement of costs incurred during the implementation of projects which are co-financed in connection with the 7th Research Framework Programme.

CEA takes the view that the Commission's decision that the retirement allowances do not constitute eligible indirect costs is based on errors of law and manifest errors of assessment of the facts, and that the Commission has failed to have regard to the principles of good administration, legal certainty, proportionality and the protection of legitimate expectations.

In the alternative, CEA seeks a declaration on the basis of Article 238 EC that the Commission has failed to comply with its contractual commitments towards CEA by refusing to treat the retirement allowances paid by CEA as eligible costs and, accordingly, to reimburse them.

Action brought on 14 October 2009 — Henkel v OHIM — JLO Holding (LIVE)**(Case T-414/09)**

(2009/C 312/59)

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

Applicant: Henkel AG & Co. KGaA (Düsseldorf, Germany) (represented by: C. Milbradt, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: JLO Holding Company LLC (Santa Monica, United States of America)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 July 2009 in case R 609/2008-1 insofar as it made an order for revocation of the Community trade mark No 984 245 'LIVE' for the goods, soaps, perfumery, cosmetic products and make-up;
- 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: the word mark 'LIVE' for goods in Class 3 (Community trade mark No 984 245)

Proprietor of the Community trade mark: Henkel AG & Co. KGaA

Applicant for the declaration of invalidity: JLO Holding Company LLC

Decision of the Cancellation Division: Partial revocation of the Community trade mark

Decision of the Board of Appeal: Partial annulment of the Cancellation Division's decision and partial revocation of the Community trade mark

Pleas in law: Infringement of Articles 51(1)(a) and Article 51(2) of Regulation (EC) No 207/2009 ⁽¹⁾, on the ground that it was proved that the trade mark at issue in the proceedings had been used in such a way as to preserve the rights of the proprietor for the product group, soaps, perfumery, cosmetic products and make-up

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).