

— Order the European Central Bank to pay the sum of EUR 5 000 in damages in view of the harm suffered by the applicant;

— Order the European Central Bank to pay the costs in their entirety.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of the European Central Bank's decision of 2 September 2009 refusing to grant him access to the databases which made possible the compilation of reports on staff recruitment and mobility from 1999 to 2009 and which he had requested in the course of preparing his doctoral thesis, and an order for damages because of the delay in the writing of his thesis.

In support of his action, the applicant submits that the statement of reasons for the refusal to grant him access to the documents in question is unlawful because it relies on exceptions which are unsubstantiated and not provided for by Decision ECB/2004/3 of the European Central Bank of 4 March 2004 on public access to European Central Bank documents ⁽¹⁾, which was adopted with a view to the implementation of Regulation No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽²⁾, and is based on the incorrect assumption that the fact that the databases are in an unprinted electronic form means that they are not 'documents'. Lastly, the European Central Bank is not entitled to rely on, as against the applicant, the difficulties encountered in making the documents available.

⁽¹⁾ OJ 2004 L 80, p. 42.

⁽²⁾ OJ 2001 L 145, p. 43.

Action brought on 19 October 2009 — Oyster Cosmetics v OHIM — Kadabell (OYSTER COSMETICS)

(Case T-437/09)

(2010/C 11/60)

Language in which the application was lodged: English

Parties

Applicant: Oyster Cosmetics SpA (Castiglione delle Stiviere, Italy) (represented by: A. Perani and P. Pozzi, lawyers)

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

Other party to the proceedings before the Board of Appeal: Kadabell GmbH & Co. KG (Lenzkirch, Germany)

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 5 August 2009 in case R 1367/2008-1;

— Order the adverse parties to bear the costs of the present proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark "OYSTER COSMETICS", for goods in class 3

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited: Community trade mark registration of the figurative mark "KADUS OYSTRA AUTO STOP PROTECTION" for goods in class 3

Decision of the Opposition Division: Allowed the opposition partially

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009 as the Board of Appeal wrongly held that there was a likelihood of confusion between the trade marks concerned.

Action brought on 23 October 2009 — Purvis v Parliament

(Case T-439/09)

(2010/C 11/61)

Language of the case: French

Parties

Applicant: John Robert Purvis (Saint Andrews, United Kingdom) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: European Parliament

Form of order sought

- Declare that the decisions of the Bureau of the Parliament of 9 March and 1 April 2009 are unlawful in so far as they amend the additional pension scheme and abolish the special methods of payment of the additional pension to Members or former Members of the Parliament who voluntarily joined that optional pension scheme;
- Annul the Parliament's decision of 7 August 2009, which refused the applicant 25 % of his pension in the form of a lump sum;
- Order the Parliament to pay the costs.

Pleas in law and main arguments

The action has been brought against the Parliament's decision of 7 August 2009, which was taken to implement the rules on the additional (voluntary) pension scheme in Annex VIII to the Rules governing the payment of expenses and allowances to Members of the European Parliament, as amended by the Parliament's decision of 9 March 2009, and which dismissed the applicant's application for payment, in part (25 %) in the form of a lump sum and in part in the form of an annuity, of his additional pension as from August 2009.

In support of his action, the applicant relies as regards the substance of the case on four pleas in law alleging:

- Infringement of the applicant's acquired rights and of the principle of the protection of legitimate expectations;
- Infringement of the general principles of equal treatment and of proportionality;
- Breach of Article 29 of the Rules governing the payment of expenses and allowances to Members of the European Parliament which provides that the Quaestors and the Secretary-General are responsible for monitoring the interpretation and the strict application of those rules;
- Breach of good faith in the implementation of contracts and nullity of purely enabling clauses.

Action brought on 4 November 2009 — Agriconsulting Europe v Commission**(Case T-443/09)**

(2010/C 11/62)

*Language of the case: Italian***Parties**

Applicant: Agriconsulting Europe SA (Brussels, Belgium) (represented by: F. Sciaudone, R. Sciaudone and A. Neri, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annul the contested decision.
- Order the Commission to pay compensation for the damage suffered.
- Order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant in the present action is a leading management consultancy providing technical advisory services for international development projects. It is bringing an action against the Commission's decision in connection with the award of Lot No 11 in contract notice EuropeAid/127054/C/SER/multi (OJ S 128 of 4 July 2008) not to include among the six economically most advantageous bids that submitted by the consortium of which the applicant was the leading participant and to award that lot to other tenderers.

The applicant puts forward the following pleas in support of its application for annulment:

- distortion of the evidence and the factual circumstances. The contested decision rejected the applicant's bid on the basis that the 'declarations of exclusivity' of three experts in its bid were also to be found in other bids and it was therefore necessary to exclude them from the evaluation. That conclusion is vitiated in so far as it failed to take account of the experts' statements denying that some of those declarations had any value, on the one hand, or actually claiming that they were false, on the other;
- misinterpretation of the consequences to be drawn from the non-compliance of the 'declarations of exclusivity' and infringement of the principle of legal certainty, in so far as the defendant imposed the penalty laid down for cases in which more than one declaration of exclusivity is signed on all the tenders, without considering the role and responsibilities of the company or the expert;
- infringement of legal requirements, of the principle of sound administration and the principal of proportionality, in so far as the defendant failed to exercise the power conferred on it to request clarification where there is some ambiguity concerning some aspect of the tender before confirming that errors exist which may affect the validity of a tender.