

Other party to the proceedings before the Board of Appeal of OHIM: Rüdiger Bartmann (Gladbeck, Germany)

Form of order sought

— Amend the contested decision of the Fourth Board of Appeal of OHIM of 18 November 2009 in Case R 656/2008-4 so that the applicant's appeal of 22 April 2008 is upheld in its entirety and that the defendant is ordered to pay the costs of the opposition proceedings, the appeal and the present action;

— in the alternative, annul the contested decision and refer it back to OHIM.

Pleas in law and main arguments

Applicant for a Community trade mark: Hairdreams Haarhandels GmbH

Community trade mark concerned: the word mark 'MAGIC LIGHT' for goods in Classes 3, 8, 10, 21, 22, 26 and 44 (Application No 5 196 597)

Proprietor of the mark or sign cited in the opposition proceedings: Rüdiger Bartmann

Mark or sign cited in opposition: the German word mark 'MAGIC LIFE' No 30 415 611 for goods in Class 3

Decision of the Opposition Division: Opposition upheld in part

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009⁽¹⁾ on the ground that the Board of Appeal erred in law in its assessment of the likelihood of confusion

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

Action brought on 29 January 2010 — Bank Melli Iran v Council

(Case T-35/10)

(2010/C 100/72)

Language of the case: English

Parties

Applicant: Bank Melli Iran (Teheran, Iran) (represented by: L. Defalque, lawyer)

Defendant: Council of the European Union

Form of order sought

— annul paragraph 4, section B, of the annex to Council Regulation (EC) No 110/2009 concerning restrictive measures against Iran as well as the decision of the Council of 18 November 2009;

— order that the Council pays the applicant's costs of this application.

Pleas in law and main arguments

In the present case the applicant seeks the partial annulment of Council Regulation (EC) No 1100/2009 of 17 November 2009⁽¹⁾ implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran⁽²⁾ and repealing Decision 2008/475/EC⁽³⁾ in so far as the applicant is included on the list of natural and legal persons, entities and bodies whose funds and economic resources are frozen in accordance with this provision.

The applicant seeks the annulment of paragraph 4, section B, of the Annex, in so far as it relates to the applicant and puts forward the following pleas in law in support of its claims.

First, the applicant argues that the contested regulation and decision were adopted in violation of the applicant's rights of defence and, in particular, its right to have a fair hearing since it did not receive any evidence or documents to support the allegations of the Council. It further states that the additional allegations to the 2008 decision are vague, unclear and impossible for the applicant to respond since it was refused the right to be heard.

The applicant also submits that the defendant infringed its obligation to provide sufficient motivation.

Second, the applicant claims that the Council failed to state individual and specific reasons for contested acts in violation of Article 15.3 of Regulation No 423/2007.

Third, the applicant contends that the defendant committed an error in interpretation of Article 7(2)(a) (b) and (c) of Regulation No 423/2007 since, in the applicant's opinion, the Council failed to explain how the applicant's ordinary banking activities prove its engagement or direct association with Iran's proliferation-sensitive nuclear activities.

In addition, the applicant contests the legality of the General Court's judgment of 14 October 2009 ⁽⁴⁾, appealed by the applicant before the Court of justice ⁽⁵⁾ by which the General Court dismissed its application aiming at annulment of Council Decision 2008/475/EC of 23 June 2008 ⁽⁶⁾. In this regard the applicant claims that the Court committed an error of law by holding that Regulation No 423/2007 and Decision 2008/475/EC were legally adopted by qualifying majority and not unanimity of members. In the applicant's opinion, since the Regulation No 423/2007 constitutes the legal basis for the adoption of the regulation and decision contested in the present application, the abovementioned reasoning is applicable to the present application. Thus, the applicant submits that the Council infringed substantial procedural requirement imposed by the Treaty, by the rules of law relating to its enforcement and by Article 7(2) of Common Position 2007/140/CFSP ⁽⁷⁾.

Further, the applicant contests the General Court's judgment in so far as the Court held that the power of appreciation of the Council, based on Article 7(2) of Regulation No 423/2007, is autonomous and thus rejected the relevance of decisions of the United Nations Security Council in violation of the principle of proportionality and of the right of property. The applicant submits that the same reasoning applies to the regulation and decision contested in the present case since the Council did not take into account the decisions of the UNSC and therefore violated the principle of proportionality and the right of property.

⁽¹⁾ OJ 2009 L303, p.31

⁽²⁾ Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran OJ 2007 L 103, p. 1

⁽³⁾ Council Decision of 23 June 2008 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran, OJ 2008 L 163, p. 29

⁽⁴⁾ Case T-390/08, *Bank Melli Iran v Council*, not yet reported

⁽⁵⁾ C-548/09 P, *Bank Melli Iran v Council*

⁽⁶⁾ OJ 2008 L 163, p. 29

⁽⁷⁾ Council Common Position 2007/140/CFSP of 27 February 2007 concerning restrictive measures against Iran, OJ 2007 L 61, p. 49

Action brought on 1 February 2010 — Internationaler Hilfsfonds v Commission

(Case T-36/10)

(2010/C 100/73)

Language of the case: German

Parties

Applicant: Internationaler Hilfsfonds e.V. (Rosbach, Germany)
(represented by: H. Kaltenecker, lawyer)

Defendant: European Commission

Form of order sought

- Annul the Commission's decisions of 9 October 2009 and 1 December 2009 in so far as the applicant is thereby refused access to the documents which have not been released;
- order the defendant to pay the costs of the proceedings and those of the applicant.

Pleas in law and main arguments

The applicant objects to the Commission's decision of 9 October 2009 by which its application for access to the undisclosed documents on the file concerning the LIEN 97-2011 contract was refused in part, and to the Commission's letter of 1 December 2009 informing the applicant that a decision on the applicant's second application for access to the file of the LIEN 97-2011 contract could not be taken within the period prescribed.

In support of its application the applicant submits, in essence, that the Commission was not entitled to deny the applicant access to the documents applied for on the basis of the exceptions laid down under Article 4(3) and (4) of Regulation (EC) No 1049/2001. ⁽¹⁾ The applicant further submits in that regard that there is an overriding public interest in the release of the documents which have not yet been made available.

⁽¹⁾ Regulation (EC) 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 (OJ 2001 L 145, p. 43).