

The applicant also submits that the acceptance of land for payment was in accordance with the conditions relating to the eligibility of land, regard being had to the fact that, in accordance with the Act of Accession, a condition for the eligibility of land is that it was being maintained in good agricultural condition (GAC) on 30 June 2003, whereas maintenance of the land in good agricultural and environmental condition (GAEC) on the day of monitoring was not a condition governing eligibility of the land but rather a condition, failure to comply with which would lead to a reduction in the rate of payment.

In addition, the applicant contends that the number of on-the-spot checks in 2005 in the Opolski Province was effected on a basis which was in compliance with the requirements of Article 26 of Regulation No 796/2004.

Second, the applicant argues that there has been a breach of the fourth subparagraph of Article 7(4) of Regulation (EC) No 1258/1999 and of Article 31(2) of Regulation (EC) No 1290/2005, a breach of Guidelines No VI/5330/97 and infringement of the principle of proportionality by reason of the application of a correction in an amount which was flagrantly excessive in relation to the risk of potential financial loss to the budget of the European Union.

In the view of the applicant, even if it were to be established that there were certain breaches in the control and penalty system established by the Polish authorities — which is denied — such breaches would be so insignificant that the risk of possible losses for the Union budget would be many times lower than the level of the correction applied by the Commission in the contested decision. This in particular relates to the level of the correction applied by the Commission by reason of the non-completion of the vectorisation system for identification of land parcels and by reason of the allegedly inadequate number of on-the-spot checks in Opole Province in 2005.

(¹) OJ 2010 L 63, p. 7.

(²) Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).

(³) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

(⁴) Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).

(⁵) Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18).

Action brought on 28 May 2010 — medi v OHIM — Deutsche Medi Präventions (deutschemedi.de)

(Case T-247/10)

(2010/C 209/72)

Language in which the application was lodged: German

Parties

Applicant: medi GmbH & Co KG (Bayreuth, Germany) (represented by: D. Terheggen, H. Lindner and T. Kiputh, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Deutsche Medi Präventions GmbH (Düsseldorf, Germany)

Form of order sought

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 16 March 2010 in Case R 1366/2008-4;

— reject the application for Community trade mark EM 5 089 099 in its entirety;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Deutsche Medi Präventions GmbH.

Community trade mark concerned: word mark 'deutschemedi.de' for services in Class 35.

Proprietor of the mark or sign cited in the opposition proceedings: the applicant.

Mark or sign cited in opposition: German word mark 'medi.eu' for goods and services in Classes 5, 10, 35, 39, 41, 42 and 44; German word mark 'medi welt' for goods and services in Classes 5, 10, 35, 38, 39, 41, 42, 43 and 44; German word mark 'medi-Verband' for goods and services in Classes 5, 10, 35, 38, 39, 41, 42, 43 and 44; Community word mark 'World of medi' for goods and services in Classes 3, 5, 10, 35, 41 and 42; German figurative mark, containing the word elements 'medi Ich fühl mich besser', for goods and services in Classes 5, 10, 35, 38, 39, 41, 42, 43 and 44; a trade and commercial name in commercial use containing the word element 'medi' for all goods and services to which the abovementioned marks relate in the territory of the European Union.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal allowed and opposition rejected.

Pleas in law: Infringement of Article 8(1) and (4) of Regulation (EC) No 207/2009, ⁽¹⁾ because there is a likelihood of confusion between the trade marks at issue and the applicant has proved that it owns the commercial rights including the right to a commercial name, and infringement of the right to a hearing under Article 73 of Regulation No 207/2009.

⁽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 26 May 2010 — Italy v Commission and EPSO

(Case T-248/10)

(2010/C 209/73)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, avvocato dello Stato)

Defendant: European Commission and European Personnel Selection Office (EPSO)

Form of order sought

The applicant claims that the Court should:

— annul the notice of open competition EPSO/AD/177/10 — Administrators (AD 5) published in the *Official Journal of the European Union* on 16 March 2010 (OJ 2010 C 64A);

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Case T-218/09 *Italy v Commission*. ⁽¹⁾

⁽¹⁾ OJ C 180 of 1.8.09, p. 59.

Action brought on 31 May 2010 — Kitzinger v OHIM — Mitteldeutscher Rundfunk, Zweites Deutsches Fernsehen (KICO)

(Case T-249/10)

(2010/C 209/74)

Language in which the application was lodged: German

Parties

Applicant: Kitzinger & Co (GmbH & Co. KG) (Hamburg, Germany) (represented by: S. Kitzinger, 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: Mitteldeutscher Rundfunk (body governed by public law) (Leipzig, Germany), Zweites Deutsches Fernsehen (body governed by public law) (Mainz, Germany)

Form of order sought

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 March 2010 in Case R 1388/2008-4 to the extent that the decision of the Opposition Division of 28 July 2008 on opposition No B 1 133 612 is annulled and the opposition rejected;