

— Order OHIM to bear its own costs and to pay the costs incurred by the applicant;

— In the event that Vermop Salmon intervenes in the proceedings, order the intervener to bear its own 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 'Twist System' for goods in Classes 7, 8 and 21

*Proprietor of the Community trade mark:* the applicant

*Applicant for the declaration of invalidity:* Vermop Salmon GmbH

*Trade mark right of applicant for the declaration:* the word mark 'TWIX' for goods in Class 21 and the word mark 'TWIXTER' for goods in Classes 9, 12, 21, 22 and 25

*Decision of the Cancellation Division:* The application for a declaration of invalidity was partially upheld

*Decision of the Board of Appeal:* Vermop Salmon's appeal to have the applicant's mark declared invalid in respect of additional goods was upheld and the applicant's appeal was dismissed

*Pleas in law:* Infringement of Article 63(1) of Regulation (EC) No 207/2009 <sup>(1)</sup> as the First Board of Appeal of OHIM did not examine whether the evidence of use put forward by Vermop Salmon is sufficient to prove genuine use of the earlier Community trade marks; infringement of the first and second sentences of Article 57(2) in conjunction with Article 42(2) of Regulation No 207/2009 as the evidence of use which Vermop Salmon placed on the case-file does not prove genuine use of the earlier Community trade marks; and infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 as the marks at issue are not similar.

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

### Action brought on 17 August 2010 — Seatech International and Others v Council and Commission

(Case T-337/10)

(2010/C 288/88)

*Language of the case:* French

### Parties

*Applicants:* Seatech International, Inc. (Cartagena, Columbia), Tuna Atlantic, Ltda (Cartagena) and Comextun, Ltda (Cartagena) (represented by: F. Foucault, lawyer)

*Defendants:* Council of the European Union and European Commission

### Forms of order sought

— annulment of Commission Regulation No 468/2010 of 28 May 2010 in so far as it designates the vessel Marta Lucia R as a vessel engaged in IUU fishing;

— annulment of Council Regulation No 1005/2008 of 29 September 2008 and, consequently, of Commission Regulation No 468/2010, in so far as it implements a procedure for designating vessels engaged in IUU fishing on the ground that it does not respect the principle of *audi alteram partem* and gives rise to discrimination;

— a declaration that the vessel Marta Lucia R is not engaged in IUU fishing activities.

### Pleas in law and main arguments

By the present action, the applicants, owner and operator of the fishing vessel Marta Lucia R, as well as purchaser of caught fish, seek the annulment of Commission Regulation (EU) No 468/2010 of 28 May 2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing <sup>(1)</sup> ('the EU IUU list'), designating the vessel Marta Lucia R as a vessel engaged in illegal, unreported and unregulated fishing. The applicants also seek annulment of Council Regulation (EC) No 1005/2008 <sup>(2)</sup> establishing the procedure for drawing up that EU IUU list.

The applicants submit that the vessel Marta Lucia R was included on the European Union IUU list merely because it had been included on a list of vessels considered to be engaged in illegal, unreported and unregulated fishing established by the Inter-American Tropical Tuna Commission ('the IATTC IUU list').

The applicants put forward a number of pleas in law in support of their action, including:

- infringement of the principle of *audi alteram partem* and of the rights of the defence, in that the vessel *Marta Lucia R* was included in the IATTC IUU list without procedural requirements being observed to ensure that the party concerned was heard;
- infringement of the principle of non-discrimination, as the vessel *Marta Lucia R* was included automatically in the EU IUU list following its inclusion in the IATTC IUU list, whereas other vessels active in the territory of the Member States were included in the EU IUU list only after a procedure had been held in which all parties were heard;
- the decisions taken by the Inter-American Tropical Tuna Commission are vitiated by illegality because that commission exceeded its powers, as it was entrusted with a mandate only of information and investigation on species preservation, and was not granted authority to take binding decisions; and
- there are no facts supporting a finding that the fishing done by the vessel *Marta Lucia R* is illegal, unreported and unregulated as those terms are understood in the Community.

<sup>(1)</sup> OJ 2010 L 131, p. 22.

<sup>(2)</sup> Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ 2008 L 286, p. 1).

**Action brought on 18 August 2010 — Commission v Tornasol Films**

**(Case T-338/10)**

(2010/C 288/89)

*Language of the case: Spanish*

#### Parties

*Applicant:* European Commission (represented by: A.-M Rouchaud-Joët, Agent, and R. Alonso Pérez-Villaneuva, lawyer)

*Defendant:* Tornasol Films SA (Madrid, Spain)

#### Form of order sought

- order the defendant to pay the applicant EUR 19 554,00 plus default interest calculated at the rate of 5 % per annum from 14 April 2009, and
- order Tornasol Films SA to pay all the costs incurred in the present proceedings.

#### Pleas in law and main arguments

The present action concerns the alleged breach of a contract concluded between the Commission and the defendant within the framework of the MEDIA Plus Programme.

The wording of that contract stipulated that the recipient is to deposit the equivalent of the amount received as Community support in a specified account within 30 days of the start of production and to submit to the Commission a reinvestment plan for that amount within six months from the same date.

In support of its form of order, the applicant claims:

- that the defendant has failed to comply with those contractual obligations although it has not presented any arguments and has not disputed the debit note sent by the Commission;
- if the obligations provided for in the contract have been breached by the beneficiary, the wording of the contract allows the Commission to rescind it and require the return of the sums paid as a financial contribution;
- in spite of various reminders and summonses the defendant has not repaid the funds awarded.

**Action brought on 9 August 2010 — Cosepuri v EFSA**

**(Case T-339/10)**

(2010/C 288/90)

*Language of the case: Italian*

#### Parties

*Applicant:* Cosepuri Soc. coop. p.a. (Bologna, Italy) (represented by: F. Fiorenza, lawyer)