

### Pleas in law and main arguments

The pleas in law and main arguments put forward by the applicant are identical to those advanced in Case T-168/10 *Commission v SEMEA*,<sup>(1)</sup> the Commission claiming furthermore that the Commune de Millau is jointly and severally liable for repayment of SEMEA's debt, in so far as the Commune de Millau took over SEMEA's assets and liabilities, including the contract concluded between SEMEA and the Commission which forms the basis of the dispute.

<sup>(1)</sup> OJ 2010 C 161, p. 48.

### Action brought on 29 December 2010 — Just Music Fernsehbetrieb v OHIM — France Télécom (Jukebox)

(Case T-589/10)

(2011/C 72/34)

*Language in which the application was lodged: English*

#### Parties

*Applicant:* Just Music Fernsehbetrieb GmbH (Landshut, Germany) (represented by: T. Kaus, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* France Télécom SA (Paris, France)

#### 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 14 October 2010 in case R 1408/2009-1
- Order the defendant to reject the opposition decision of 30 September 2010 in case B 1304494 and to allow the application No 6163778 for registration in its entirety
- Order the defendant to bear the costs of the proceedings
- Order the other party to the proceedings before the Board of Appeal to bear the costs of the proceedings incurred by the applicant before the Board of Appeal and the Opposition Division and
- In the alternative, stay the proceedings until a final decision is taken on the application for revocation lodged by the applicant on 21 December 2010 at OHIM against the

earlier Community trade mark No 3693108.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark 'Jukebox', for services in classes 38 and 41 — Community trade mark application No 6163778

*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 in opposition:* Community trade mark registration No 3693108 of the figurative mark 'JUKE BOX', for goods and services in classes 9, 16, 35, 38, 41 and 42

*Decision of the Opposition Division:* Upheld the opposition

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* The applicant considers that the contested decision infringes: (i) Articles 15 and 42(2) of Council Regulation (EC) No 207/2009, as no proof of genuine use has been provided of the mark cited in the opposition proceedings — Community trade mark registration No 3693108 'JUKE BOX', (ii) Articles 8(1)(b), 9 and 65(2) of Council Regulation (EC) No 207/2009, as the Board of Appeal erred in its assessment of the similarity of the contested trade mark, and (iii) Article 78 of Council Regulation (EC) No 207/2009, as the Board of Appeal failed to exercise its powers of investigation and failed to exercise the full remit of its powers.

### Action brought on 27 December 2010 — Thesing and Bloomberg Finance v ECB

(Case T-590/10)

(2011/C 72/35)

*Language of the case: English*

#### Parties

*Applicants:* Gabi Thesing and Bloomberg Finance LP (London, United Kingdom), (represented by: M.H. Stephens and R.C. Lands, Solicitors)

*Defendant:* European Central Bank

#### Form of order sought

- Annul the decision of the European Central Bank communicated by letters dated 17 September 2010 and 21 October 2010, refusing access to the documents requested by the applicants;

- Require the European Central Bank to grant access to those documents to the applicants, in accordance with the Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3) <sup>(1)</sup>; and
- Require the ECB to pay the costs of the application.

### Pleas in law and main arguments

By means of the present application, the applicants seek, pursuant to Article 263 TFEU, annulment of a decision of the European Central Bank communicated by letters dated 17 September 2010 and 21 October 2010, whereby the European Central Bank refused the applicants' request for access to the following documents pursuant to the Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3):

- (i) A note entitled *The impact on government deficit and debt from off-market swaps. The Greek case (SEC/GovC/X/10/88a)*;
- (ii) A second note, entitled *The Titlos transaction and possible existence of similar transactions impacting on the euro area government debt or deficit levels (SEC/GovC/X/10/88b)*.

In support of their action, the applicants submit the following pleas in law:

Firstly, the applicants allege that the European Central Bank misconstrued and/or misapplied Article 4.1(a) of the decision of the European Central Bank dated 4 March 2004 (ECB/2004/3), which provides for an exception to the general right of access conferred by article 2 of that decision, as:

- (i) The European Central Bank failed to construe article 4.1(a) as requiring consideration of public interest factors in favour of disclosure;
- (ii) The European Central Bank failed to give any sufficient or proper weight to the public interest factors in favour of disclosing the requested documents;
- (iii) The European Central Bank overstated and/or misidentified the public interest against disclosure of the requested documents.

In addition, the applicants allege that the European Central Bank misconstrued and/or misapplied article 4.2 of the decision of the European Central Bank dated 4 March 2004 (ECB/2004/3),

which provides for an exception to the general right of access conferred by article 2 of that decision, as:

- (i) The European Central Bank ought to have construed an "overriding" public interest as meaning a public interest that is strong enough to outweigh any public interest in maintaining the exemption;
- (ii) The European Central Bank ought to have concluded that there was an overriding public interest, in this sense, in favour of the disclosure of the information requested.

Finally, the applicants allege that the European Central Bank misconstrued and/or misapplied article 4.3 of the decision of the European Central Bank dated 4 March 2004 (ECB/2004/3), which provides for an exception to the general right of access conferred by article 2 of that decision, as:

- (i) The European Central Bank ought to have construed an 'overriding' public interest as meaning a public interest that is strong enough to outweigh any public interest in maintaining the exemption;
- (ii) The European Central Bank ought to have concluded that there was an overriding public interest, in this sense, in favour of the disclosure of the information requested;
- (iii) The European Central Bank overstated and/or misidentified the public interest against disclosure of the requested documents.

<sup>(1)</sup> Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3) (OJ 2004 L 80, p. 42).

### Action brought on 17 December 2010 — Zenato v OHIM — Camera di Commercio Industria Artigianato e Agricoltura di Verona (RIPASSA)

(Case T-595/10)

(2011/C 72/36)

Language in which the application was lodged: Italian

#### Parties

*Applicant:* Alberto Zenato (Verona, Italy) (represented by: A. Rizzoli, lawyer)

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