

- the CST did not make clear what was to be understood by ‘extended’ holidays;
- the CST took the view that the non-delivery notice which the appellant found in her letterbox on her return from holiday obviously related to the registered letter from the Parliament with its response to her claim.

Action brought on 23 February 2011 — Mizuno v OHIM — Golfino (G)

(Case T-101/11)

(2011/C 120/37)

Language in which the application was lodged: German

Parties

Applicant: Mizuno Corp. (Osaka, Japan) (represented by: T. Raab and H. Lauf, 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: Golfino AG (Glinde, 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 15 December 2010 in Case R 821/2010-1 in its entirety;
- Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the figurative mark containing the letter ‘G’ together with other symbols, for goods in Class 25

Proprietor of the mark or sign cited in the opposition proceedings: Golfino AG

Mark or sign cited in opposition: the figurative mark containing the letter ‘G’ together with a plus sign, for goods and services in Classes 18, 25 and 35

Decision of the Opposition Division: the opposition was rejected

Decision of the Board of Appeal: the appeal was granted and the application was rejected

Pleas in law: Infringement of Article 8(1)(b) and indirectly of Article 7(1)(b) of Regulation (EC) No 207/2009 ⁽¹⁾ as there is no likelihood of confusion between the marks at issue

⁽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 21 February 2011 — EMA v Commission

(Case T-116/11)

(2011/C 120/38)

Language of the case: Italian

Parties

Applicant: European Medical Association (EMA) (Brussels, Belgium) (represented by: A. Franchi, L. Picciano and N. di Castelnuovo, lawyers)

Defendant: European Commission

Form of order sought

- Declare that the action is admissible and well founded as to the substance;

Principally:

- find and declare that the EMA correctly complied with its contractual obligations under contracts 507760 DICOEMS and 507126 COCOON and is therefore entitled to reimbursement of expenditure incurred in the performance of those contracts as set out in FORMs C which were sent to the Commission, including FORM C relating to period IV under the COCOON contract;
- find and declare that the Commission’s decision to terminate those contracts, contained in the letter of 5 November 2010, is unlawful;
- accordingly, declare that there is no basis for the Commission’s claim for reimbursement of the sum of EUR 164 080,10 and, consequently, annul, withdraw — including by the issue of a corresponding credit note — the debit note of 13 December 2010 by which the Commission sought repayment of the above sum or, in any event, declare that that claim was unlawful;
- order the Commission to pay the remaining sums due to EMA claimed in FORMs C forwarded to the Commission, amounting to EUR 250 999,16;

In the alternative:

- establish the liability of the Commission on the ground of unjust enrichment and wrongful act;
- as a consequence, order the Commission to pay compensation for the financial loss and non-material damage suffered by the applicant, to be quantified in the course of the proceedings;

in any event, order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

By the present action, brought under Article 272 TFEU and based on the arbitration clause in Article 13 of the DICOEMS and COCOON contracts, the applicant disputes the lawfulness of the Commission's decision of 5 November 2010 to terminate, following an audit carried out by the Commission's services, the two contracts concluded with the applicant as part of the Sixth Framework Programme for Research and Development. The applicant therefore disputes the lawfulness of the debit note issued by the Commission on 13 December 2010 in the light of the audit report seeking the recovery of sums paid by the Commission to the applicant for implementing two projects in which the applicant was involved.

The applicant relies on five pleas in support of its action.

1. First plea, relating to the enforceability of the debt claimed by the Commission and the eligibility of all the costs it declared to the Commission.

— In particular, the applicant submits that the Commission infringed Articles 19, 20, 21 and 25 of the General Contractual Conditions regarding the definition of eligible costs, and infringed the principle of non-discrimination with regard to the interpretation of accounting rules for non-profit-making organisations to be applied in accounting verification procedures.

2. Second ground, alleging that the Commission was in breach of the duty of genuine cooperation and good faith in performance of the contract in that it failed to comply fully with its own contractual obligations.

— In particular, the applicant maintains that the Commission was in breach of its duty to monitor the satisfactory implementation of the projects from the point of view of financial control as provided for in Article II(3)(4)(a) of the General Contractual Conditions.

3. Third ground, alleging that, in the overall light of the omissions on its part, the Commission infringed the principle of sound administration and the principle of proportionality, on account of the disproportionate nature of the measure it adopted — the termination of the contract — when considered in the light of the alleged failure to comply with certain accounting obligations which, even if they were to be proven to exist, would not give rise to a right to reimbursement of almost all of the advances agreed to.

4. Fourth ground, alleging that the Commission infringed the rights of the defence as a result of its conduct during the accounting verification procedure.

— In particular, the applicant complains that it was not granted the right to be heard during the verification and audit stage and maintains the Commission failed to take account of a series of additional documents forwarded to it on 19 August 2009.

5. Fifth ground, put forward in the alternative, alleging non-contractual liability on the part of the Commission on the basis of Articles 268 and 340 TFEU.

— The applicant alleges, first, unjust enrichment to the Commission's benefit, on the ground that the final results of the DICOEMS and COCOON projects were made available to it without it having to bear all of the costs of those projects.

— Second, the applicant claims compensation for damage arising from a wrongful act on the part of the Commission, which circulated a letter that was defamatory in content and seriously prejudicial to the applicant's reputation.

Appeal brought on 3 March 2011 by Luigi Marcuccio against the judgment of the Civil Service Tribunal delivered on 14 December 2010 in Case F-1/10, Marcuccio v Commission

(Case T-126/11 P)

(2011/C 120/39)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

— In any event, set aside the judgment under appeal, in so far as the court at first instance: (a) rejected as inadmissible some of the claims made by the appellant in the proceedings at first instance; (b) rejected certain other claims made at first instance on the ground that they were closely connected with those rejected as inadmissible; (c) ordered the appellant to bear his own costs in the proceedings at first instance.