

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 17 January 2011 in Case R 1711/2010-1;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'Infront' for goods in Classes 6 and 20

Decision of the Examiner: rejection of the application

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b), (c) and (d) of Regulation (EC) No 207/2009 ⁽¹⁾ as the Community trade mark in question has distinctive character, is not descriptive and is not a designation which has become customary

⁽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 15 March 2011 — Centre national de la recherche scientifique v Commission

(Case T-167/11)

(2011/C 145/56)

Language of the case: French

Parties

Applicant: Centre national de la recherche scientifique (Paris, France) (represented by: N. Lenoire, lawyer)

Defendant: European Commission

Form of order sought

— declare the action admissible and well-founded;

— order the Commission to refund the sum of EUR 20 989,82 allegedly receivable and claimed by the Commission pursuant to the contract in its debit note No 2010-1232 of 26 October 2010 which gave rise to the set-off measure of 17 December 2010 (Ref: BUDG/C3 D(2010) B.2 — 1232) together with interest on late payment at the statutory rate in accordance with Belgian law governing the contract;

— order the Commission to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging violation of Article II.19(1) of the general conditions of Contract LSHB — CT-2004-503319 concerning the 'ALLOSTEM' project under the Sixth Framework Programme for Research and Technological Development (2002-2006) ('the ALLOSTEM Contract'), as the Commission limited, or deprived, the applicant of the possibility to adduce evidence of the proper performance of the contract with respect to the eligibility of personnel costs by failing to observed the criteria for defining eligible costs.
2. Second plea in law, alleging breach of the contractual obligations arising from Articles II.19 and II.20 of the general conditions of the ALLOSTEM Contract, as the Commission excluded the eligibility of costs relating to the 'provision for loss of employment' and maternity leave for a biologist recruited under a temporary contract.
3. Third plea in law, alleging infringement of Article 12 of the ALLOSTEM Contract by making the assessment of whether all debts arising under the contract were certain subject to Belgian law. The applicant claims that:

— The Commission relied only on European Union law and not Belgian law in order to determine whether the debt claimed was certain, and

— That the debt was the subject of a serious dispute preventing it from being certain.

Action brought on 17 March 2011 — Rivella International v OHIM — Baskaya di Baskaya & C. (BASKAYA)

(Case T-170/11)

(2011/C 145/57)

Language in which the application was lodged: German

Parties

Applicant: Rivella International AG (Rothrist, Switzerland) (represented by: C. Spintig, U. Sander and H. Förster, lawyers)

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

Other party to the proceedings before the Board of Appeal: Baskaya di Baskaya & C. s.a.s. (Grosseto, Italy)

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 10 January 2011 in Case R 534/2010-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Baskaya di Baskaya & C. s.a.s.

Community trade mark concerned: Figurative mark including word element 'BASKAYA' for goods in Classes 29, 30 and 32.

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

Mark or sign cited in opposition: International registered figurative mark including the word element 'Passaia' for goods in Class 32.

Decision of the Opposition Division: Rejection of the opposition.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 42(2) and (3) of Regulation (EC) No 207/2009, ⁽¹⁾ in that the Board of Appeal failed to apply Article 5 of the German-Swiss Agreement of 13 April 1892 on mutual protection of patents, trade marks and designs and for that reason erred in law by failing to have regard to the proof of use adduced by the applicant.

⁽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 March 2011 — Hopf v OHIM (Clampflex)

(Case T-171/11)

(2011/C 145/58)

Language of the case: German

Parties

Applicant: Hans-Jürgen Hopf (Zirndorf, Germany) (represented by V. Mensing, lawyer)

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

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 19 January 2011 in Case R 1514/2010-4;

— Order OHIM to pay the costs, including those incurred in the course of the appeal procedure.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'Clampflex' for goods in Classes 5, 9, 10, 17 and 20

Decision of the Examiner: partial rejection of the application

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 ⁽¹⁾ as the Community trade mark in question has distinctive character and is not descriptive

⁽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 22 March 2011 — Hesse v OHIM — Porsche (Carrera)

(Case T-173/11)

(2011/C 145/59)

Language in which the application was lodged: German

Parties

Applicant: Kurt Hesse (Nuremberg, Germany) (represented by: M. Krogmann, lawyer)

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

Other party to the proceedings before the Board of Appeal: Dr. Ing. h.c. F. Porsche AG (Stuttgart, 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 11 January 2011 in Case R 306/2010-4 and reject the opposition against Community trade mark application No 5 723 432 of 16 February 2007;

— In the alternative,

- (a) annul the contested decision in so far as it declares that the goods are similar or that unfair advantage is taken of the distinctive character or repute of goods covered by the marks cited in opposition by goods or related services covered by the mark applied for, which are designed to be fitted both inside and outside of mechanical motor vehicles as motor vehicle accessories and come from different markets;