*Proprietor of the mark or sign cited in the opposition proceedings:* Promotora Imperial, SA

*Mark or sign cited in opposition:* Community word mark 'i-hotel' for goods and services in Classes 16, 41 and 43.

*Decision of the Opposition Division:* Opposition upheld in part.

*Decision of the Board of Appeal:* Appeal dismissed

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation No 207/2009 as there is no likelihood of confusion between the trade marks at issue. The applicant claims that the Board of Appeal was incorrect in holding there to be similarity both between the goods and services concerned and between the trade marks at issue.

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**Action brought on 31 May 2011 — Ewald v OHIM — Kin Cosmetics (Keen)**

**(Case T-280/11)**

(2011/C 238/36)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Rita Ewald (Frauenwald, Germany) (represented by: S. Reinhardt, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Kin Cosmetics, SA (Sant Feliu de Guixols, Spain)

**Form of order sought**

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of OHIM of 3 March 2011 in Case R 1383/2010-1;

— Reject the opposition filed at OHIM on 24 July 2008 under No B 1359944 by KIN COSMETICS, SA against Community trade mark application No EM 006 498 621 'Keen';

— In the alternative, in the event that the Court cannot itself reach a decision under the second head of claim, refer the case back to OHIM for a fresh decision;

— Order the defendant and KIN COSMETICS, SA, in so far as it decides to participate in the proceedings, to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* the applicant

*Community trade mark concerned:* the word mark 'Keen' for goods and services in Classes 3 and 44 — application No 6 498 621

*Proprietor of the mark or sign cited in the opposition proceedings:* Kin Cosmetics, SA

*Mark or sign cited in opposition:* the Community and national word and figurative marks 'KIN', 'KinBooKs', 'KINWORKS' and 'KINSTYLIUM' for goods and services in Classes 3, 5, 35 and 44

*Decision of the Opposition Division:* the opposition was upheld

*Decision of the Board of Appeal:* the appeal was dismissed

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

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**Appeal brought on 3 June 2011 by Diego Canga Fano against the judgment of the Civil Service Tribunal of 24 March 2011 in Case F-104/09, Canga Fano v Council**

**(Case T-281/11 P)**

(2011/C 238/37)

*Language of the case: French*

**Parties**

*Appellant:* Diego Canga Fano (Brussels, Belgium) (represented by S. Rodrigues and C. Bernard-Glanz, lawyers)

*Other party to the proceedings:* Council of the European Union

**Form of order sought by the appellant**

The applicant claims that the Tribunal should:

— declare the appeal admissible;

— set aside the judgment delivered on 24 March 2011 by the Civil Service Tribunal of the European Union in Case F-104/09;

— grant the applications for annulment and damages which the applicant brought before the Civil Service Tribunal, subject to the proviso that the applicant would be satisfied with the annulment of the decision adopted and would accept one euro as symbolic compensation for the damage caused to him;

— order the Council to pay the costs of both instances.

**Pleas in law and main arguments**

In support of the appeal, the appellant relies on a single plea in law, divided into three parts and alleging an error of law.

— In the first part, the applicant claims that the Civil Service Tribunal interpreted the applicable provisions in a manner contrary to that laid down by the Court of Justice and the General Court in their case-law concerning the appointing authority's discretion (paragraphs 35 and 36 of the judgment under appeal).

— In the second part, the applicant claims that the Civil Service Tribunal drew conclusions unjustified in law in its review of the manifest error of assessment (paragraphs 48, 51, 52, 58, 78, and 79 of the judgment under appeal) and contradicted its own criteria, with which it claims to replace the case-law of the Court of Justice and the General Court.

— In the third part, the applicant claims that the Civil Service Tribunal's statement of reasons is vitiated by inaccuracies of fact, linked to distortion of, or failure to take account of, evidence put before it (paragraphs 80, 81, 85, 88 and 90 of the judgment under appeal).

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## Action brought on 6 June 2011 — Gooré v Council

**(Case T-285/11)**

(2011/C 238/38)

*Language of the case: French*

### Parties

*Applicant:* Charles Kader Gooré (Abidjan, Côte d'Ivoire) (represented by: F.L. Meynot, lawyer)

*Defendant:* Council of the European Union

### Form of order sought

The applicant claims that the Court should:

— annul in part Council Regulation (EU) No 330/2011 of 6 April 2011 amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire, as regards the inclusion of the name of Mr Charles Kader Gooré in the list in Annex II thereto (and declare that it is inapplicable to him);

— order the Council of the European Union to pay damages to Mr Charles Kader Gooré in the amount of fifty thousand euros (EUR 50 000) by way of compensation for the harm suffered;

— order the Council of the European Union to pay the costs.

### Pleas in law and main arguments

The applicant puts forward two pleas in law in support of his action:

1. The first plea in law alleges infringement of essential procedural requirements. The applicant criticises the Council of the European Union, first, of failing to provide a statement of reasons and, second, of infringing the principle of proportionality, in that the restrictive measures go beyond what is necessary for achieving the objectives pursued by the Council of the European Union.

2. The second plea in law alleges infringement of the treaties. The applicant criticises the Council of the European Union, first, of infringing the rights of the defence in that all of the evidence in support of a measure were never communicated to the applicant and, second, of infringing the right to property.

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## Action brought on 6 June 2011 — Heitkamp BauHolding v Commission

**(Case T-287/11)**

(2011/C 238/39)

*Language of the case: German*

### Parties

*Applicant:* Heitkamp BauHolding GmbH (Herne, Germany) (represented by: W. Niemann, lawyer)

*Defendant:* European Commission

### Form of order sought

The applicant claims that the General Court should:

— annul the Commission's decision of 26 January 2011, as amended on 15 April 2011, which, to the applicant's knowledge, is yet to be published in the *Official Journal of the European Union*;

— order the defendant to pay the costs of the proceedings.

### Pleas in law and main arguments

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

— The *Sanierungsklausel* (Scheme on the fiscal carry-forward of losses in the case of restructuring of companies in difficulty) in Paragraph 8c(1a) of the German Law on Corporation Tax (Körperschaftssteuergesetz; 'KStG') is not State aid for the purposes of Article 107 TFEU. In classifying the system of reference the Commission erred in considering that system to be 'the rules on … loss carry-forward for companies subject to change in their shareholding'. On the contrary, the applicant claims that the system of reference is actually the indefinite carry-forward of losses; the carry-forward is also used for the purposes of corporate taxation as a corollary of the objective net principle.

— The loss of carry-forwards provided for in Paragraph 8c KStG must therefore be classed as an exception, whilst the *Sanierungsklausel* in Paragraph 8c(1a) KStG, for its part, constitutes an exception to the exception which merely reinstates the general rule, thereby rendering the principle that taxable persons should contribute to State financing in accordance with their means (the Leistungsfähigkeitsprinzip) applicable in cases of corporate restructuring.

— It is true that the defendant acknowledges that 'the system of reference is the KStG in its current form', but it fails to appreciate that the legal situation in the Federal Republic was changed by the introduction of the Law on acceleration of growth (the Wachstumsbeschleunigungsgesetz). Since the introduction of the provision on hidden reserves in Paragraph 8c KStG, in healthy undertakings losses can still be deducted and carried forward where the changes made to the shareholding do not exceed the amount of the hidden reserves. Thus, for healthy undertakings, the provision