

Applicant for the declaration of invalidity of the Community trade mark: The applicant

Grounds for the application for a declaration of invalidity: The party requesting the declaration of invalidity grounded its request pursuant to Articles 53(1)(a) and 8(1)(b) of Council Regulation (EC) No 207/2009, which was based on the earlier Community trade mark registration No 4532751 for the figurative mark (in colour) 'lactofree', for goods in class 29

Decision of the Cancellation Division: Upheld the cancellation for a part of the goods

Decision of the Board of Appeal: Annulled the decision of the Cancellation Division and dismissed the request for a declaration of invalidity

Pleas in law: Infringement of Articles 53(1)(a) and 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal erred in its evaluation of the comparison of the signs and thus in the overall assessment as to the likelihood of confusion between the figurative marks 'lactofree' and 'Lactofree'.

Appeal brought on 5 July 2011 by AO against the order of the Civil Service Tribunal of 4 April 2011 in Case F-45/10 AO v Commission

(Case T-365/11 P)

(2011/C 282/56)

Language of the case: English

Parties

Appellant: AO (Brussels, Belgium) (represented by: P. Lewisch, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

- Set aside the order of the Civil Service Tribunal of 4 April 2011 in Case F-45/10 AO v Commission;
- In case the General Court is in the position to decide the case on the merits to give the same form of order as sought at first instance, *i.e.* to:
 - Annul decision CMS 07/046 of the European Commission of 23 July 2009 due to harassment, mismanagement and the abuse of the fundamental rights to be heard;
 - Annul all decisions taken by the appointing authority against the applicant between the period September 2003 until the removing from the post due to

harassment and mismanagement, alleging the abuse of the right of the applicant to be heard;

- Enable a hearing of the applicant according to Articles 7(1) and 24 of the Staff Regulation⁽¹⁾ and refer in this respect to the submitted requests in February 2008 and March 2008;
- Grant a symbolic compensation of EUR 1,00 (one) to the applicant in order to compensate his moral and professional prejudice suffered as exposed in the application, as far as the objective of such a complaint is not financial but rather recognition of the dignity and the professional reputation of the applicant; and
- Order the other party to the proceedings to pay all costs.

Pleas in law and main arguments

In support of the appeal, the appellant relies on three pleas in law.

1. First plea in law, alleging that the conditions for a decision by order in accordance with Article 76 of the Rules of Procedure of the Civil Service Tribunal were not met and that the action was not manifestly bound to fail, as:
 - The Civil Service Tribunal did not take into consideration several claims made and evidence presented with regard to the harassment of the applicant;
 - The applicant was denied the right to be prescribed a period of time to put his application in order, in accordance with Article 36 of the Rules of Procedure of the Civil Service Tribunal, with regard to two decisions of the appointing authority cited by the applicant in its application.
2. Second plea in law, alleging that the order in case F-45/10 infringes European Union law as described under Article 11(1) of Annex I to the Statute of the Court of Justice of the European Union, as the applicant is entitled to compensation since harassment took place.
3. Third plea in law, alleging the Civil Service Tribunal violated the right of the applicant to a hearing, as provided in Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as in Article 47(2) of the Charter of Fundamental Rights of the European Union.

⁽¹⁾ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, as amended (O) English special edition: Series I Chapter 1959-1962, p. 135)