

- Grant the applicant the form of order sought by him before the Civil Service Tribunal of the European Union;
- Order the defendant to pay the costs of both proceedings.

### Pleas in law and main arguments

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

1. First plea in law, alleging an error of law and mistaken and inadequate reasoning when the Civil Service Tribunal of the European Union examined the plea submitted at first instance alleging infringement of the principles of legitimate expectations and legal certainty.
2. Second plea in law, alleging an error of law and infringement of the principles of legitimate expectations, legal certainty and equality and of the principle of reasonableness, in so far as the Civil Service Tribunal of the European Union did not in this case place any temporal limit on the effects of its interpretative judgment.

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### Action brought on 30 January 2012 — European Dynamics Luxembourg and Evropaiki Dynamiki — Proigmena Systemata Tilepikoinonion Pliroforikis kai Tilematikis v European Police Office (Europol)

(Case T-40/12)

(2012/C 109/40)

*Language of the case: Greek*

#### Parties

*Applicants:* European Dynamics Luxembourg SA (Ettelbrück, Luxembourg) and Evropaiki Dynamiki — Proigmena Systemata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by V. Khristianos, lawyer)

*Defendant:* European Police Office (Europol)

#### Form of order sought

By this action the applicants claim that the General Court should:

- annul the decision dated 22 November 2011 of the European Police Office (Europol), whereby Europol excluded the consortium's bid by which the applicants participated in the open tendering procedure No D/C3/1104, and
- order EUROPOL to pay the applicants' entire costs.

### Pleas in law and main arguments

The applicants consider that the contested decision should be annulled, under Article 263 TFEU and put forward the following argument, which encompasses three considerations:

First, Europol without any justification excluded the applicants' bid, maintaining that the applicants altered the technical and financial terms of their bid, with the consequence that Europol has no legal basis for its decision to exclude the applicants.

Second, Europol had no justification for its complaint to the applicants that their bid was inaccurate and for excluding it, when it was Europol which caused and consented to or condoned the existence of vagueness and lack of clarity as to the meaning of the terms 'out of the box' and 'customisation', contrary to the principle of transparency.

Third, Europol, by excluding the applicants' bid from the tendering procedure, infringed the principle of proportionality in the application of the terms of the contractual documents.

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### Action brought on 27 January 2012 — LS Fashion v OHIM — Sucesores de Miguel Herreros (L'Wren Scott)

(Case T-41/12)

(2012/C 109/41)

*Language in which the application was lodged: English*

#### Parties

*Applicant:* LS Fashion, LLC (Wilmington, United States) (represented by: R. Black and S. Davies, Solicitors)

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

*Other party to the proceedings before the Board of Appeal:* Sucesores de Miguel Herreros, SA (La Orotava, Spain)

#### 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 24 November 2011 in case R 1584/2009-4;
- Annul the decision of the Opposition Division in so far as it upheld the opposition;
- Allow CTM application No 5190368 to proceed for registration in its full extent; and
- Order the Office and the other party to the proceedings to bear their own costs of the proceedings before the Office and the General Court and pay those of the applicant.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'L'Wren Scott', for goods in classes 3, 9, 14 and 25 — Community trade mark application No 5190368

*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:* Spanish trade mark application No 1164120 of the word mark 'LOREN SCOTT', for goods in class 25

*Decision of the Opposition Division:* Upheld the opposition for all the contested goods and allowed the CTM application to proceed for the remaining non-contested goods of the application

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

*Pleas in law:* Infringement of Articles 42(2) and (3) of Council Regulation No 207/2009, and Rules 22(2) and (3) of Commission Regulation No 2868/95, as the Board of Appeal failed to properly assess the evidence submitted by the opponent as to its genuine use of the earlier mark in light of the requirements imposed by the relevant provisions and by case-law, including the requirements to consider the place, time, extent and nature of use of a mark. Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal failed: (i) to properly assess the visual, aural and conceptual similarity of the respective marks; and (ii) to properly take into account the appropriate degree of similarity of the respective marks, and properly assess the degree of distinctiveness of the marks, including the likelihood of confusion.

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**Action brought on 27 January 2012 — Intesa Sanpaolo v OHIM — equinet Bank (EQUITER)**

(Case T-47/12)

(2012/C 109/42)

*Language in which the application was lodged:* English

#### Parties

*Applicant:* Intesa Sanpaolo SpA (Torino, Italy) (represented by: P. Pozzi, G. Ghisletti and F. Braga, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* equinet Bank AG (Frankfurt am Main, 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 6 October 2011 in case R 2101/2010-1;

— Order the Office to bear the costs of the proceedings.

#### Pleas in law and main arguments

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark 'EQUITER', for goods and services in classes 9, 16, 35, 36, 38, 41 and 42 — Community trade mark application No 66707749

*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 1600816 of the word mark 'EQUINET', for services in classes 35, 36 and 38; German trade mark registration No 39962727 of the word mark 'EQUINET', for goods and services in classes 9, 35, 36 and 38

*Decision of the Opposition Division:* Rejected the opposition

*Decision of the Board of Appeal:* Annulled the decision of the Opposition Division

*Pleas in law:* Infringement of Articles 42(2) and (3) in conjunction with Article 15(1)(a) of Council Regulation No 207/2009, as the Board of Appeal made a wrong assessment concerning the material submitted in support of the use of the mark, as: (i) there are no sufficient indications on activity, time, place and extent of use of the mark; (ii) there is no sufficient indication concerning the nature of use of the trademark; and (iii) the evidence furnished by the opponent is insufficient to prove that the earlier trade mark was genuinely used in the relevant territory during the period of five years preceding the date of publication of the contested mark.

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**Action brought on 6 February 2012 — Euroscript — Polska v Parliament**

(Case T-48/12)

(2012/C 109/43)

*Language of the case:* French

#### Parties

*Applicant:* Euroscript — Polska Sp. z.o.o. (Cracow, Poland) (represented by: J.-F. Steichen, lawyer)