

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.

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.

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)

Defendant: European Parliament

Form of order sought

- First, annul the decision of 9 December 2011;
- In the alternative, annul call for tenders No PL/2011/EP;
- Order the Parliament to pay the costs of the proceedings;
- Reserve to the applicant all other rights, pleas and actions.

Pleas in law and main arguments

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

1. First plea in law, alleging abuse of power in that the European Parliament did not communicate, or communicated late, the information requested by the applicant following the reallocation of the contract in the context of a procurement procedure concerning the provision of translation services into Polish. ⁽¹⁾
2. Second plea in law, alleging infringement of the rules and principles of the European Union, including the Financial Regulation, ⁽²⁾ and the Regulation implementing the Financial Regulation, ⁽³⁾ the successful tenderer being debarred when it requested the re-evaluation of its tender and the Parliament therefore no longer being entitled to revisit its decision to award the contract to the applicant without either suspending or annulling the call for tenders.

⁽¹⁾ OJ 2011/S 56-090361.

⁽²⁾ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

⁽³⁾ Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).

Action brought on 7 February 2012 — Lafarge v Commission

(Case T-49/12)

(2012/C 109/44)

Language of the case: French

Parties

Applicant: Lafarge (Paris, France) (represented by: A. Winckler, F. Brunet and C. Medina, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul, in accordance with Article 263 TFEU, Commission decision C(2011) 8890 of 25 November 2011 in proceedings pursuant to Article 24(1)(d) of Council Regulation (EC) No 1/2003 in Case 39520 — Cement and related products;

- order the European Commission to pay the costs in their entirety.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Regulation No 1/2003, ⁽¹⁾ in so far as the Commission exceeded the powers conferred on it by Article 24(1)(d) thereof by requiring the applicant to confirm that its response was complete, correct and precise or to communicate the missing information or the necessary amendments so that the response would be complete, correct and precise.
2. Second plea in law, alleging breach of the principle of proportionality, since the Commission went beyond what was appropriate and necessary in order to achieve the objective pursued — by adopting a decision requiring the applicant to confirm that its response was complete, correct and precise or to communicate the missing information or the necessary amendments so that the response would be complete, correct and precise — whereas, in view of the extent of the information requested, such confirmation was impossible, and the Commission could have taken more appropriate measures to ensure that the applicant's response could provide a reliable basis for assessing whether the undertakings' conduct was compatible with Articles 101 and 102 TFEU.
3. Third plea in law, alleging breach of the rights of the defence and of the right to a fair hearing, in that the contested decision effectively requires the applicant to withdraw all the reservations qualifying its response, whereas, in view of the complexity of the information requested, it had to weigh a large number of issues.