

**Form of order sought**

- uphold the action and annul the decision of the First Board of Appeal of 26 June 2012 in Case R 124/2011-1, on grounds of infringement of Article 8(1)(b) of Regulation No 207/2009;
- reject the opposition of Commercialunione Prima Srl to the European Union-wide registration of international trade mark No W000943981 'Lavazza a modo mio' and, consequently, grant the same scope of registration;
- order that the costs borne by Luigi Lavazza SpA in the proceedings be fully awarded in its favour.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Luigi Lavazza SpA

*Community trade mark concerned:* Figurative mark 'LAVAZZA A MODO MIO' for goods and services in Classes 11, 29, 30 and 43 — International registration for European Union No W00 943 981

*Proprietor of the mark or sign cited in the opposition proceedings:* Commercialunione Prima Srl

*Mark or sign cited in opposition:* National figurative marks 'A MODO MIO', 'la PIZZA A MODO MIO' and 'A MODO MIO BIRRA & MUSIC' for services in Class 42

*Decision of the Opposition Division:* Action partially upheld

*Decision of the Board of Appeal:* The Board of Appeal took note of the withdrawal of the application for registration of 'LAVAZZA A MODO MIO' for Class 43 only and dismissed the action as to the remainder

*Pleas in law:* Infringement of Article 8(1)(b) and the second part of Article 76(1) of Regulation No 207/2009

**Action brought on 28 August 2012 — Alfatar Benelux v Council**

(Case T-394/12)

(2012/C 331/57)

*Language of the case:* English

**Parties**

*Applicant:* Alfatar Benelux SA (Ixelles, Belgium) (represented by: N. Keramidis and N. Korogiannakis, lawyers)

*Defendant:* Council of the European Union

**Form of order sought**

- Annul the decision of the defendant to reject the bid of the applicant filed in response to the open call for tenders UCA-218-07 for the provision of technical maintenance — help desk and on-site intervention services for the PC's printers

and peripherals of the General Secretariat of the Council (OJ/S 2008/S 91-122796), communicated afresh to the applicant by registered letter dated 18 June 2012, following the annulment of the previous award decision dated 1 December 2008 by the General Court in its judgment in case T-57/09 *Alfatar Benelux v Council*;

- Order the defendant to pay the applicant's damages suffered on account if the tendering procedure in question; and
- Order the defendant to pay the costs.

**Pleas in law and main arguments**

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

1. First plea in law, alleging that the contested decision violated the tender specification since the use of the movers to execute technical assistance tasks as envisaged in the winning tender is contrary to such specifications;
2. Second plea in law, alleging that the contested decision is vitiated by multiple manifest errors of assessment especially concerning the certification of the winning tenderer, the qualifications of the personnel of the winning tenderer as opposed to those of the applicant, the knowledge transfer marks, the evaluation of the number of staff proposed by the tenderers.
3. Third plea in law, alleging that the evaluation committee mixed selection and award criteria and phases of the tendering procedure.
4. Fourth plea in law, alleging that there exist various inconsistencies and inaccurate information in the call for tenders.
5. Fifth plea in law, alleging that the defendant did not comply with the provision of Article 100(2) of the Financial Regulation<sup>(1)</sup>, especially with regard to the verification of selection criteria.

<sup>(1)</sup> 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)

**Action brought on 6 September 2012 — Cosma Moden v OHIM — s.Oliver Bernd Freier (COSMA)**

(Case T-398/12)

(2012/C 331/58)

*Language in which the application was lodged:* German

**Parties**

*Applicant:* Cosma Moden GmbH & Co. KG (Emsdetten, Germany) (represented by: J. Meyer, lawyer)