

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

Other party to the proceedings before the Board of Appeal: Tom Tailor GmbH (Hamburg, Germany)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 17 September 2012 in case R 729/2011-2, in its entirety; and
- Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'T', for goods in classes 9 and 25 — Community trade mark application No 8543183

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 1368232 of the figurative mark 'T', for goods in classes 9, 18 and 25; Community trade mark registration No 2747996 of the figurative mark 'T', for goods in classes 3, 6, 9, 14, 18, 21, 24, 25 and 28

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Annulled the contested decision and rejected the Community trade mark application

Pleas in law: Infringement of Articles 8(1)(b) of Council Regulation No 207/2009.

Action brought on 7 December 2012 — IBSolution v OHIM — IBS (IBSolution)

(Case T-533/12)

(2013/C 46/35)

Language in which the application was lodged: English

Parties

Applicant: IBSolution GmbH (Neckarsulm, Germany) (represented by: F. Ekey, lawyer)

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

Other party to the proceedings before the Board of Appeal: IBS AB (Solna, Sweden)

Form of order sought

The applicant claims that the Court should:

- Declare the action to be well founded;
- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 September 2012 in case R 771/2011-2;
- Amend the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 September 2012 in case R 771/2011-2, by granting registration of the trade mark applied for; and
- Order the defendant 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 'IBSolution', for services in classes 35, 41 and 42 — Community trade mark application No 8421877

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 38729 of the figurative mark 'IBS', for goods and services in classes 9, 16, 35, 41 and 42

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 8(1)(b) of Council Regulation No 207/2009.

Action brought on 12 December 2012 — Zafeiropoulos v European Centre for the Development of Vocational Training (Cedefop)

(Case T-537/12)

(2013/C 46/36)

Language of the case: Greek

Parties

Applicant: Panteleimon Zafeiropoulos (Thessaloniki, Greece) (represented by: M. Kontogiorgos, lawyer)

Defendant: European Centre for the Development of Vocational Training (Cedefop)

Form of order sought

The applicant claims that the General Court should:

- declare the action to be admissible;
- annul the decision of the evaluation committee of Cedefop not to select the applicant, on the basis of the tender which he submitted in relation to the fast-track restricted competition for the award of the contract 'Provision of medical services to Cedefop staff' (Contract Notice 2012/S115-189528), and accordingly also annul the decision to award the contract (2012/S208-341369/27.10.2012), whereby the contract at issue was awarded to a paediatrician;
- annul the decision of 19/11/2012 to refuse the confirmatory application made to the defendant and order the defendant to make available to the Court and to the applicant the full text of all documents relating to the contested procedure, so that the Court may be in a position to review the lawfulness of the contested decision;
- order Cedefop to pay to the applicant the sum of EUR 100 000 in compensation for the harm which he has suffered as a consequence of the actions of Cedefop which are the subject of this action and,
- order Cedefop to pay the legal costs, and also other expenses and costs which the applicant has incurred in relation to these proceedings.

Pleas in law and main arguments

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

1. First, the applicant maintains that the contested actions of Cedefop lack adequate reasons and infringe the applicant's rights of defence and right to effective protection, since, on the basis of the content of the contested award decision and the written documents provided in response to the applicant's request, it is impossible to come to any definitive conclusion as to how the evaluation was carried out and ultimately how the tenders were ranked and, consequently, the grounds of the final decision of the defendant Cedefop were not adequately stated, in accordance with Article 296 TFEU and Article 41(2) of Directive 2004/18 EK, ⁽¹⁾ and the applicant was not informed of the particular characteristics and relative advantages of the selected tender by comparison with his own tender; further the applicant has never been informed of the factors which were the basis of the evaluation committee's final decision in relation to the contested procedure for the award of the contract for the provision of medical services to Cedefop staff, notwithstanding the submission of an application therefor and a confirmatory application therefor.

2. Second, the applicant maintains that Cedefop erred as to the facts and infringed the principles of objectivity and impartiality since the assessments/evaluations of Cedefop's Evaluation Committee which are contained in the applicant's individual evaluation report are manifestly erroneous and the evaluations of the technical requirements of the tenders submitted lack objectivity.
3. Third, the applicant maintains that there was also an infringement of a fundamental condition of the contract notice in relation to the technical capacity of the tenderers and, in particular, there was an infringement of the condition which refers to the 'Technical capacity' of the candidates, since the successful tenderer lacks one of the medical specialisations required by the contract notice and should have been excluded.
4. Fourth, the applicant maintains there was an infringement of the principle of proportionality and the obligation to define the award criteria to permit objective comparative evaluation of the tenders, since Cedefop, using as an award criterion 'quality of the interview' infringed the above principle and failed to comply with the above obligation, since that criterion was formulated in such an imprecise manner that the candidates were unable to determine what was the best quality they should have in order to obtain the highest mark.
5. Fifth, the applicant maintains that the contested contract for the supply of services is contrary to the Staff Regulations of Officials of the European Union, read together with the current national legislation, under which the defendant Cedefop, as a public body which employs more than 50 workers, failed to comply with its obligation to use exclusively the services of a doctor with such a specialisation in occupational medicine.
6. Sixth, the applicant maintains that there is also an infringement of the principles of transparency since the defendant Cedefop, by failing to provide the information which was sought by the applicant, both in his application of 15 October 2012 and in his confirmatory application of 19 November 2012, infringed the provisions of Article 100(2) of the Financial Regulation No 1605/2002/EC and the provisions of Article 149(3) of Regulation No 2342/2002/EC, by reason of its failure to state reasons for its refusal decision as required by those provisions.

Lastly, the applicant maintains that the application for damages is well founded, since the applicant has complied with Article 44(1)(c) of the Court's Rules of Procedure and the application to the Court sets out the facts which establish the conditions for Cedefop to incur non-contractual liability, as defined in Article 340 TFEU.

⁽¹⁾ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts