

Action brought on 3 May 2013 — Matratzen Concord v OHIM — KBT (ARKTIS)

(Case T-258/13)

(2013/C 207/70)

Language in which the application was lodged: German

Parties

Applicant: Matratzen Concord GmbH (Cologne, Germany) (represented by: I. Selting, lawyer)

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

Other party to the proceedings before the Board of Appeal: KBT & Co. Ernst Kruchen agenzia commerciale società in accomandita (Locarno, Switzerland)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 March 2013 in Case R 2133/2011-4;
- Order the defendant to pay the costs including those incurred in the course of the proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: the word mark 'ARKTIS' for goods in Classes 20 and 24 — Community trade mark No 2 818 680

Proprietor of the Community trade mark: KBT & Co. Ernst Kruchen agenzia commercial società in accomandita

Party applying for revocation of the Community trade mark: the applicant

Decision of the Cancellation Division: the application was upheld in part

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Article 51(1)(a) of Regulation No 207/2009

Action brought on 7 May 2013 — France v Commission

(Case T-259/13)

(2013/C 207/71)

Language of the case: French

Parties

Applicant: French Republic (represented by: E. Belliard, D. Colas and C. Candat, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- partially annul Commission Decision No 2013/123/EU of 26 February 2013, excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Fund for Rural Development (EAFRD), to the extent that it excludes expenditure incurred by the French Republic in the context of the aid Indemnités compensatoires des handicaps naturels (ICHN) (compensatory allowances for natural handicaps) (CANH) of the Plan de Développement Rural Hexagonal 2007-2013 for the financial years 2008 and 2009;
- in the alternative, partially annul Decision 2013/123/EU, first, to the extent that it excludes from European Union financing the part of the expenditure incurred by the French Republic in the context of the CANH aid for sheep which is not declared as aid for sheep and, secondly, to the extent that it excludes from European Union financing the part of the expenditure incurred by the French Republic in the context of the CANH aid for beef which have been inspected on the spot for the animal identification inspection or the inspection of beef premiums;
- order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an infringement of Article 10(2) and (4) and Article 14(2) of Regulation No 1975, ⁽¹⁾ as the Commission held that the French Government had failed to fulfil its obligations concerning controls on the ground that it had failed to carry out, with respect to bovine animals and sheep for which a ewe premium had been requested, a count of those animals during on-the-spot controls in respect of the Compensatory Allowances for Natural Handicaps ('CANH aid'). That plea in law is divided into two parts in the context of which the applicant claims:
 - that the obligation to count animals during on-the-spot controls in respect of the CANH aid is contrary to the continuity of the criterion of load factors and the principle of equal treatment and
 - that the Commission wrongly interpreted Article 10(2) and (4) and Article 14(2) of Regulation No 1975/2006 by holding that the French control system was inadequate to determine compliance with the loading criterion.

2. Second plea in law, alleging infringement of Article 2(2) of Regulation No 1082/2003⁽²⁾ and of Article 26(2)(b) of Regulation No 796/2004⁽³⁾ concerning controls in the context of the identification of bovine animals and bovine animal premiums, as the Commission held that Articles 10(2) and (4) and 14(2) of Regulation No 1975/2006 impose the obligation to carry out a count of animals during an on-the-spot control in order to determine the criterion of load factors.
3. Third plea in law, alleging, in the alternative, an unlawful extension by the Commission of the application of the flat rate correction to sheep farms which are not eligible for the ewe premium and to beef farming inspected in the context of the identification of bovine animals or beef premiums.

- ⁽¹⁾ Commission Regulation (EC) No 1975/2006 of 7 December 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (OJ 2006 L 368, p. 74).
- ⁽²⁾ Commission Regulation (EC) No 1082/2003 of 23 June 2003 laying down detailed rules for the implementation of Regulation (EC) No 1760/2000 of the European Parliament and of the Council as regards the minimum level of controls to be carried out in the framework of the system for the identification and registration of bovine animals (OJ 2003 L 156, p. 9).
- ⁽³⁾ Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18).

Action brought on 15 May 2013 — Skysoft Computersysteme/OHIM — British Sky Broadcasting and Sky IP International (SKYSOFT)

(Case T-262/13)

(2013/C 207/72)

Language in which the application was lodged: English

Parties

Applicant: Skysoft Computersysteme GmbH (Kleinmachnow, Germany) (represented by: P. Ehrlinger and T. Hagen, lawyers)

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

Other parties to the proceedings before the Board of Appeal: British Sky Broadcasting Group plc and Sky IP International Ltd (Isleworth, United Kingdom)

Form of order sought

The applicant claims that the Court should:

- Set aside the contested decision of the Fourth Board of Appeal of OHIM of 20 March 2013, as it dismissed the appeal of the plaintiff against the decision of the OHIM Opposition Division of 30 September 2011 and did not reject the opposition of the intervening party;
- Order the intervening party to pay the costs of the proceedings including the costs incurred during the course of the appeal proceedings.
- Request the defendant to produce the annexes submitted by the intervening party and the plaintiff within the framework of the opposition proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'SKYSOFT' — Community trade mark application No 4 782 645 for products and services in classes 9, 35, 37, 38 and 42

Proprietor of the mark or sign cited in the opposition proceedings: The other parties to the proceedings before the Board of Appeal

Mark or sign cited in opposition: The word mark 'SKY' for goods and services in classes 9, 16, 18, 25, 28, 35, 38, 41 and 42

Decision of the Opposition Division: Upheld the opposition for all the contested goods and services

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 8 May 2013 — Lausitzer Fruchteverarbeitung v OHIM — Rivella International (holzmichel)

(Case T-263/13)

(2013/C 207/73)

Language in which the application was lodged: German

Parties

Applicant: Lausitzer Fruchteverarbeitung GmbH (Sohland, Germany) (represented by: A. Weiß, lawyer)

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

Other party to the proceedings before the Board of Appeal: Rivella International AG (Rothrist, Switzerland)