

Third plea in law, alleging that the institutions infringed Article 3(7) of the basic Regulation by failing to properly analyze the effects on the situation of the Union industry of the anti-competitive practices investigated by the *Bundeskartellamt* (German Competition Authority). In this respect, the applicant submits that the institutions made a manifest error of assessment by concluding that anti-competitive practices did not have an effect on micro- and macro-economic indicators.

Fourth plea in law, alleging that the institutions infringed Article 3(2) of the basic Regulation by failing to make an objective examination of the situation of the Union industry. In this respect, the applicant submits that the institutions made a manifest error of assessment by concluding that anti-competitive practices did not have an effect on micro- and macro-economic indicators

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### Action brought on 31 July 2013 — *Miettinen v Council*

(Case T-395/13)

(2013/C 274/38)

*Language of the case: English*

#### Parties

*Applicant:* Samuli Miettinen (Espoo, Finland) (represented by: O. Brouwer and E. Raedts, lawyers)

*Defendant:* Council of the European Union

#### Form of order sought

The applicant claims that the Court should:

Annul the decision of the Council of 21 May 2013 refusing to grant full access to Document 12979/12 pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), as communicated to the applicant on 21 May 2013 in a letter bearing the reference '06/c/02/1 3' (the contested decision) as well as its renewed refusal of 23 July 2013;

Order the defendant to pay the applicant's costs pursuant to Article 87 of the Rules of procedure of the General Court, including the costs of any intervening parties.

#### Pleas in law and main arguments

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

First plea in law, alleging breach of Article 4(2) 2<sup>nd</sup> indent and Article 4(3) 1<sup>st</sup> subparagraph of Regulation (EC) No 1049/2001, as the contested decision is based on a wrong interpretation and application of the said provisions, which relate to the protection of court proceedings and legal advice and to the protection of the on-going decision-making process respectively:

Firstly, the Council failed to demonstrate that disclosure of Document 12979/12 prejudices its legal service's ability to defend it in future legal proceedings, and undermines the legislative process;

Secondly, the Council failed to demonstrate that Document 12979/12 is particularly sensitive and/or of a wide scope justifying the setting aside of the presumption favouring disclosure of legal opinions in the legislative context;

Thirdly, the Council's theory of harm is purely hypothetical. It is factually, as well as legally, unfounded considering that the content of the advice contained in Document 12979/12 was already in the public domain when the contested decision was taken; and

Fourthly, the Council failed to apply the overriding public interest test when invoking Article 4(3) 1<sup>st</sup> subparagraph when it considered only the perceived risks to its decision-making process associated to disclosure and not the positive effects of such disclosure, inter alia, for the legitimacy of the decision-making process and failed to apply the test when invoking Article 4(2) 2<sup>nd</sup> indent.

Second plea in law, alleging breach of the obligation to state adequate reasons under Article 296 TFEU, as the Council did not fulfil its obligation to state sufficient and adequate reasons for the contested decision.

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### Action brought on 30 July 2013 — *Dosen v OHIM — Gramm (Nano-Pad)*

(Case T-396/13)

(2013/C 274/39)

*Language in which the application was lodged: German*

#### Parties

*Applicant:* Franko Dosen (Berlin, Germany) (represented by: H. Losert, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Thomas Gramm (Bremen, Germany)

#### Form of order sought

— Annul the decision of the Cancellation Division of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 September 2011 (Ref: 4204 C) in the form of the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 May 2013 in Case R 1981/2011-4.

#### Pleas in law and main arguments

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* Word mark 'Nano-Pad' for goods in Class 17 — Community trade mark No 8 228 421

*Proprietor of the Community trade mark:* Franko Dosen

*Applicant for the declaration of invalidity of the Community trade mark:* Thomas Gramm

*Grounds for the application for a declaration of invalidity:* Absolute grounds for invalidity under Article 52(1)(a) and (b) of Regulation No 207/2009

*Decision of the Cancellation Division:* The application for a declaration of invalidity was granted in part

*Decision of the Board of Appeal:* Appeal dismissed

*Pleas in law:* Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009

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#### Action brought on 2 August 2013 — TVR Automotive v OHIM — TVR Italia (TVR)

(Case T-398/13)

(2013/C 274/40)

*Language of the case:* German

#### Parties

*Applicant:* TVR Automotive Ltd (Whiteley, United Kingdom) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* TVR Italia Srl (Milan, Italy)

#### Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 May 2013 in Case R 823/2011-2;

— Dismiss the appeal of 14 April 2013 by TVR Italia Srl against the decision of the Opposition Division of OHIM of 14 February 2011, B 313 248;

— Order the defendant OHIM and TVR Italia Srl, if it joins the proceedings, to pay the costs.

#### Pleas in law and main arguments

*Applicant for a Community trade mark:* TVR Italia Srl

*Community trade mark concerned:* Figurative mark, containing the word elements 'TVR ITALIA', for goods and services in Classes 12, 25 and 37 — Community trade mark registration No 5 699 954

*Proprietor of the mark or sign cited in the opposition proceedings:* the applicant

*Mark or sign cited in opposition:* National and Community word marks 'TVR' for goods and services in Classes 9, 11, 12, 25 and 41.

*Decision of the Opposition Division:* Opposition partially upheld

*Decision of the Board of Appeal:* Annulment of the decision of the Opposition Division and rejection of the opposition

*Pleas in law:*

— Infringement of Article 42(2) and (3) of Regulation No 207/2009;

— Infringement of the principle *res iudicata* or *ne bis in idem* and of Article 42(2) of Regulation No 207/2009, in conjunction with Article 15 of Regulation No 207/2009

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#### Action brought on 8 August 2013 — NIIT Insurance Technologies v OHIM (SUBSCRIBE)

(Case T-404/13)

(2013/C 274/41)

*Language of the case:* German

#### Parties

*Applicant:* NIIT Insurance Technologies Ltd (London, United Kingdom) (represented by M. Wirtz, lawyer)