

**Action brought on 21 October 2013 — MHCS v OHIM —  
Compañía Vinícola del Norte de España (ICE IMPERIAL)**

(Case T-555/13)

(2013/C 377/41)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* MHCS (Epernay, France) (represented by: P. Boutron, N. Moya Fernández and L.-É. Balleydier, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Compañía Vinícola del Norte de España, SA (La Guardia, Spain)

**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 14 August 2013 given in Case R 2588/2011-2;
- Grant Community trade mark application No 8 837 379 for the word mark 'ICE IMPERIAL' for goods in Class 33;
- Order the defendant and the intervener to pay the costs of the present proceedings, as well as those incurred during the proceedings before the OHIM.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'ICE IMPERIAL' for goods and services in Classes 32, 33 and 43 — Community trade mark application No 8 837 379

*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 237 875 of the figurative mark for 'all kinds of wine except sparkling wine and sherry' in Class 33; Spanish trade mark registration No 95 020 of the figurative mark for 'any class of wines except sparkling wine and sherry wine' in Class 33; Spanish trade mark registration No 1 508 304 of the word mark 'IMPERIAL' for 'wines' in Class 33

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

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 42(2) and (3) CTMR and Rule 22(3) of Commission Regulation (EC) No 2868/95 of 13 December 1995.

**Action brought on 6 November 2013 — Istituto Di  
Vigilanza Dell'Urbe v Commission**

(Case T-579/13)

(2013/C 377/42)

*Language of the Procedure: Italian*

**Parties**

*Applicant:* Istituto Di Vigilanza Dell'Urbe SpA (Rome, Italy) (represented by: D. Dodaro and S. Cianciullo, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- find that the tender of the successful tenderer, Città di Roma Metronotte s.r.l., fails to comply with the *lex specialis* governing tenders and in particular with point 5.2 of the specifications under which the tenders should have been drawn up in accordance 'with European and national law concerning the transfer of undertakings and in particular with Directive 2001/23/EC and with the national measures implementing that directive' with regard in particular to the 'provisions for the safeguarding of employees' rights in the event of a change of employer as a result of the legal transfer of an undertaking';
- find that the tender submitted by the Città di Roma Metronotte s.r.l. objectively infringes the principles of equal treatment and of competition, and is therefore contrary to the provisions contained in Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, Recital 42 of the preamble to which states that '[t]he purpose of the procedures for the award of contracts is to satisfy the needs of the institutions on the best possible terms while guaranteeing equal access to public contracts and complying with the principles of transparency and non-discrimination';

- consequently, annul the decision awarding the contract to Città di Roma Metronotte s.r.l. and set aside any contract that may have been concluded with that company;
- order the European Commission to pay the costs of these proceedings;
- order the European Commission to pay compensation for harm suffered.

#### Pleas in law and main arguments

The present action is brought against the measure of the Representation of the European Commission in Italy, Commission ref. ARES (2013) 2936015, of 27 August 2013, concerning 'PO/2013-11-SEC/ROM — Interinstitutional call for tenders concerning security guard and reception services at the European Union Houses in Rome and Milan, Italy — Lot 1: European Commission Representation and European Parliament Information Office', which rejected the applicant's tender.

In support of its action, the applicant puts forward two pleas in law.

#### 1. First plea, alleging breach of the *lex specialis* governing tenders and infringement of the principle of equal treatment.

- the applicant claims in that regard that the *lex specialis* provided that the successful tenderer of the service should have carried out the switch between contractors by employing the security guards previously employed by the outgoing contractor company on the same site. The successful tenderer however refused to carry out the switch between contractors; and that
- by implicit confirmation of the award, the defendant infringed the principle of the equal treatment that calls for the drawing up and impartial application of unequivocal and uniform call for tender rules for all tenderers.

#### 2. Second plea, alleging breach of Commission Delegated Regulation (EU) No 1268/2012.

- the applicant claims in that regard infringement of the principle, enshrined in Article 2 of Directive 2004/18/EC, according to which competitors are to be treated equally, and of the principles, reflected in that directive, according to which the interests of transparency and competition, as well as the relevant employment protection rules, are to be respected; and that

- the successful tenderer could submit an economically advantageous tender only by not complying with the rules of the *lex specialis* governing tenders, of collective bargaining and of the European and national employment protection principles, with which the other tenderers complied.

### Action brought on 8 November 2013 — Shire Pharmaceutical Contracts v Commission

(Case T-583/13)

(2013/C 377/43)

*Language of the case: English*

#### Parties

*Applicant:* Shire Pharmaceutical Contracts (Hampshire, United Kingdom) (represented by: K. Bacon, Barrister, M. Utges Manley and M. Vickers, Solicitors)

*Defendant:* European Commission

#### Form of order sought

The applicant claims that the Court should:

- Annul the decision contained in the letter of the European Commission dated 2 September 2013, confirmed by the letter dated 18 October 2013, refusing eligibility for a reward for a voluntary paediatric investigation plan under Article 37 of Regulation (EC) No 1901/2006<sup>(1)</sup>; and
- Order the defendant to bear the applicant's costs.

#### 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 that the contested decision is vitiated by fundamental errors in law in the interpretation of Regulation (EC) No 1901/2006.
2. Second plea in law, alleging a breach of the principle of legal certainty.

<sup>(1)</sup> Regulation (EC) No 1901/2006 of the European Parliament and of the Council of 12 December 2006 on medicinal products for paediatric use and amending Regulation (EEC) No 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No 726/2004 (OJ 2006 L 378, p. 1)