

In second place, the appellants take issue with the General Court for failing to conclude that they were 'directly and individually concerned' for the purpose of Article 263 TFEU. The General Court was incorrect not to examine the objections of inadmissibility raised by the Commission alleging a lack of individual concern on the part of the appellants. In the appellants' view, there can be no doubt as to their being individually concerned according to the case-law of the General Court.

Appeal brought on 23 January 2014 by Enercon GmbH against the judgment of the General Court (Fourth Chamber) delivered on 12 November 2013 in Case T-245/12: Gamesa Eólica, SL v Office for Harmonisation in the Internal Market (Trade Marks and Designs)(OHIM)

(Case C-35/14 P)

(2014/C 102/24)

Language of the case: English

Parties

Appellant: Enercon GmbH (represented by: J. Eberhardt, Rechtsanwalt, R. Böhm, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Gamesa Eólica, SL

Form of order sought

The appellant claims that the Court should:

- annul the judgment in case T-245/12 handed down by the General Court on 12 November 2013;
- order OHIM to pay the costs of the proceedings.

Pleas in law and main arguments

The appellant submits that the contested judgment should be annulled on the following grounds:

1. As a consequence of the fact that the appellant did not lodge a reply in the proceedings before the General Court, that Court did not involve the appellant in the proceedings and did not serve a copy of the judgment on the appellant. It is submitted that the General Court therefore acted in breach of its Rules of Procedure and violated the appellant's property rights by denial of due legal process.
2. The General Court erred in assuming that the contested mark is a 'colour mark *per se*', and should not have used this categorisation as the sole basis for assessing the distinctiveness of the mark.

Action brought on 24 January 2014 — European Commission v French Republic

(Case C-37/14)

(2014/C 102/25)

Language of the case: French

Parties

Applicant: European Commission (represented by: J.-F. Brakeland and B. Stromsky, acting as Agents)

Defendant: French Republic

Form of order sought

The Commission claims that the Court should:

- declare that, by failing to adopt, within the prescribed time-limits, all the measures necessary to recover from the relevant beneficiaries all State aid declared unlawful and incompatible with the common market by Article 1 of Commission Decision 2009/402/EC of 28 January 2009 on the 'contingency plans' in the fruit and vegetable sector implemented by France⁽¹⁾ and by failing to inform the Commission, within the time-limit set, of any measures taken to comply with that decision, the French Republic has failed to fulfil its obligations under the fourth paragraph of Article 288 TFEU and Articles 2, 3 and 4 of Decision 2009/402/EC;
- order the French Republic to pay the costs.

Pleas in law and main arguments

Recovery of all State aid declared unlawful had not taken place by the date on which the time-limit for such recovery, as laid down by Decision 2009/402/EC, expired.

On the date on which the present action was brought, the French Republic had still not adopted the measures necessary to recover that aid from the undertakings to which it had been granted, nor had it disclosed to the Commission all the information requested by that institution.

⁽¹⁾ OJ 2009 L 127, p. 11.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 27 January 2014 — Bodenverwertungs- und -verwaltungs GmbH (BVVG) and Others

(Case C-39/14)

(2014/C 102/26)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Bodenverwertungs- und -verwaltungs GmbH (BVVG)

Other parties: Thomas Erbs, Ursula Erbs

Consent authority: Landkreis Jerichower Land

Question referred

Does Article 107(1) TFEU preclude a national provision such as Paragraph 9(1), no. 3, GrdstVG, which, for the improvement of the social structure of agriculture, in effect prohibits an agency such as Bodenverwertungs- und -verwaltungs GmbH (BVVG), which must be ascribed to the State, from selling to the highest bidder in a public call for tenders agricultural land available for sale, if the highest bid is grossly disproportionate to the value of the land?

Request for a preliminary ruling from the Cour de cassation (France) lodged on 27 January 2014 — Directeur général des douanes et droits indirects, Chef de l'agence de poursuites de la Direction nationale du renseignement et des enquêtes douanières, Directeur régional des douanes et droits indirects de Lyon v Utopia SARL, operating under the business name Marshall Bioresources

(Case C-40/14)

(2014/C 102/27)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicants: Directeur général des douanes et droits indirects, Chef de l'agence de poursuites de la Direction nationale du renseignement et des enquêtes douanières, Directeur régional des douanes et droits indirects de Lyon

Defendant: Utopia SARL, operating under the business name Marshall Bioresources