

Details of the proceedings before OHIM

Applicant of the trade mark at issue: Applicant

Trade mark at issue: Community figurative mark containing the word elements 'myBaby' — Application for registration No 10 846 426

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of OHIM of 17 June 2015 in Case R 1002/2014-2

Form of order sought

The applicant claims that the Court should:

- set aside the decision of the Second Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 17 June 2015 in the appeal proceedings R 1002/2014-2;
- dismiss the opposition in its entirety;
- revoke the decision of the Second Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 21 May 2015 in appeal proceedings R 1137/2014-2;
- order OHIM to pay the costs of the proceedings.

Pleas in law

- Infringement of Article 42(2) of Regulation No 207/2009;
- Infringement of Article 15(1)(a) of Regulation No 207/2009;
- Infringement of Article 8(1)(b) of Regulation No 207/2009;
- Infringement of Article 7(1) of Regulation No 216/96 of 5 February 1996, laying down the rules of procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs).

Action brought on 21 September 2015 — Terna v Commission

(Case T-544/15)

(2015/C 363/53)

Language of the case: Italian

Parties

Applicant: Terna — Rete elettrica nazionale SpA (Rome, Italy) (represented by: A. Police, L. Di Via, F. Covone and D. Carria, lawyers)

Defendant: European Commission

Form of order sought

- Annul the decision of the European Commission — Directorate-General for Mobility and Transport (Directorate General for Energy — SRD.3 — Financial management) Reference No Move.srd.3.dir(2015)2669621 of 6 July 2015, in so far as that decision does not allow reimbursement of the costs incurred by Terna in connection with project Nos 2009-E255/09-ENER/09-TEN-E-SI2.564583 and 2007-E221/07/2007-TREN/07TEN-E-S07.91403, and imposes an obligation to repay sums granted in connection with those projects in the amounts set out in the table annexed to the contested measure;

- in the alternative, annul the decision of the European Commission — Directorate-General for Mobility and Transport (Directorate General for Energy — SRD.3 — Financial management) Reference No Move.srd.3.dir(2015)2669621 of 6 July 2015, in so far as that decision does not provide for a reduction in the reimbursement of the costs incurred by Terna in connection with project Nos 2009-E255/09-ENER/09-TEN-E-SI2.564583 and 2007-E221/07/2007-TREN/07TEN-E-S07.91403 commensurate with the profits made by CESI S.p.A.

Pleas in law and main arguments

The present action is brought against the measure adopted by the European Commission — Directorate General for Mobility and Transport (Directorate-General for Energy — SRD.3 — Financial management) Reference No Move.srd.3.dir(2015)2669621 of 6 July 2015, received by Terna S.p.A. on 21 July 2015 (prot. No 0011151), in so far as that decision precludes the application of Article 4(3) of Directive 2004/17/EC in relation to payments made in connection with project Nos 2009-E255/09-ENER/09-TEN-E-SI2.564583 and 2007-E221/07/2007-TREN/07TEN-E-S07.91403 and imposes an obligation to repay sums granted in connection with those projects in the amounts set out in the table annexed to the contested measure, and against any preliminary or in any way connected act, with particular reference, in so far as necessary, to the note of the European Commission — Directorate-General for Energy (Directorate B — Security of supply, Energy markets and Networks, B.1. — Energy policy, Security of supply and Networks) Reference No ENER.B1(2014) 509729 of 18 June 2014, as well as Audit Report No B22-09 of 1 February 2013, in so far as it is claimed that the costs incurred by Terna S.p.A. in connection with the services provided by CESI S.p.A. in relation to those projects are not eligible for reimbursement.

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

1. First plea in law, relating to the admissibility of the action.

- It is submitted in this regard that the contested measure was adopted in respect of the applicant, since it is of direct and individual concern to the applicant, and, while it does not have a specific implementing provision, that measure must be regarded as definitive and not subject to further review by the defendant.

2. Second plea in law, relating to the substance of the applicant's claims, the misapplication of Articles 14 and 37 of Directive 2004/17 in connection with the subcontracting of services, the failure to conduct inquiries and absence of adequate reasons in the contested measure, the misapplication of Article III.7, paragraphs 1, 4 and 6 of Annex III to Decision D/207630 of 2008 and misapplication of Article III.7, paragraphs 1, 4 and 6 of Annex III to Decision D/7181 of 2010 and the consequent unjustifiable reduction in reimbursement for projects on the ground of an alleged failure on the part of Terna properly to apply formal procurement procedures.

- It is submitted in this regard, in particular, that the inclusion of a provision permitting subcontracting in the framework agreements concluded between Terna and CESI at the conclusion of a negotiated procedure not preceded by the publication of a contract notice cannot be said to be contrary to Directive 2004/17 and nor can it be relied on, as claimed, as being indicative of the fact that there are no technical reasons justifying the contract being executed by a particular operator.

- The contested measure is also vitiated on other grounds, relating to the incorrect classification of the relationship between the framework agreement and individual contracts granted by Terna so CESI.
3. Third plea in law, alleging misapplication of Article 40(3)(c) of Directive 2004/17 on the basis that the Commission found that there were no technical reasons justifying the award of contracts to a particular operator without prior publication of a contract notice, failure to conduct inquiries and failure to give adequate reasons in the decision rejecting the claim for reimbursement.
 4. Fourth plea in law, alleging misapplication of Directive 2004/17 and failure to have regard to Terna's legitimate expectations on the ground that the claims for reimbursement relating to the contracts forming part of the framework agreement were disallowed as ineligible, notwithstanding the publication of the contract award notice in the Official Journal of the European Union and the irrelevance of some of the amounts for the purposes of European procedures.
 5. Fifth plea in law, put forward in the alternative, alleging breach of the principles of reasonableness and proportionality, on account of the Commission's decision to disallow the claims for reimbursement in their entirety, rather than reducing them on a proportionate basis.
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