

**Action brought on 16 September 2016 — LG Electronics v EUIPO (Second Display)****(Case T-659/16)**

(2016/C 402/70)

*Language of the case: English***Parties***Applicant:* LG Electronics, Inc. (Seoul, South Korea) (represented by: T. de Haan and P. Péters, lawyers)*Defendant:* European Union Intellectual Property Office (EUIPO)**Details of the proceedings before EUIPO***Trade mark at issue:* EU word mark 'Second Display' — Application for registration No 14 362 248*Contested decision:* Decision of the First Board of Appeal of EUIPO of 10 June 2016 in Case R 106/2016-1**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs, including those incurred by the applicant before the Office's First Board of Appeal.

**Plea in law**

- Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009 read in conjunction with Article 75 of Regulation No 207/2009.

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**Action brought on 19 September 2016 — Credito Fondiario v CRU****(Case T-661/16)**

(2016/C 402/71)

*Language of the case: Italian***Parties***Applicant* Credito Fondiario SpA (Rome, Italy) (represented by: F. Sciaudone, F. Iacovone, S. Frazzani and A. Neri, lawyers)*Defendant:* Comitato di risoluzione unico**Form of order sought**

The applicant claims that the Court should:

- annul the first and second decision of the Single Resolution Board;
- declare Article 5(1)(f) of Delegated Regulation (EU) No 2015/63, on which the contested decisions are based, incompatible with the principles of equal treatment, proportionality and legal certainty recognised by the Charter of Fundamental Rights of the European Union;
- declare Annex I to Delegated Regulation (EU) No 2015/63, on which the contested decisions are based, incompatible with the principles of equal treatment, proportionality and legal certainty recognised by the Charter of Fundamental Rights of the European Union;

- declare Delegated Regulation (EU) No 2015/63, on which the contested decisions are based, incompatible with the principle of freedom to conduct a business recognised by the Charter of Fundamental Rights of the European Union;
- order the Single Resolution Board to pay the costs.

### **Pleas in law and main arguments**

The present action concerns decisions of the executive session of the Single Resolution Board SRB/ES/SRF/2016/06 of 15 April 2016 (first decision) and SRB/ES/SRF/2016/13 of 20 May 2016 (second decision) which determine, in so far as concerns the applicant, the *ex ante* contribution provided for by Delegated Regulation (EU) 2015/63 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).

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

#### 1. First plea in law: failure to notify the first and second decision

- The Banca d'Italia did not notify the applicant of the two decisions adopted by the Board, as required by Article 5 of Council Implementing Regulation (EU) No 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to *ex ante* contributions to the Single Resolution Fund (OJ 2015 L 15, p. 1), but merely communicated the amount of the payment thereby undermining the applicant's right to bring proceedings in time. The Board did not take due care as regards the notification.

#### 2. Second plea in law: infringement of the second paragraph of Article 296 TFEU for failure to state reasons and infringement of the rule *audi alteram partem* in respect of decisions relating to *ex ante* contributions

- The contested decisions do not explain how the *ex ante* contribution was in fact calculated, thereby prejudicing the effective application of the review of the legality and validity of the decision by the applicant.

#### 3. Third plea in law: incorrect application of Article 5(1)(f) of Delegated Regulation (EU) No 2015/63.

- The *ex ante* contribution required of Credito Fondiario is disproportionate to the institution's risk profile, and is the result of an incorrect assessment of the institution's liabilities.

#### 4. Fourth plea in law: infringement of Article 4(1) and Article 6 of Delegated Regulation (EU) No 2015/63. Incorrect assessment of the risk profile of Credito Fondiario.

- On 31 December 2014, Credito Fondiario had a low risk profile, on the basis of parameters laid down in Article 4(1) and Article 6 of Delegated Regulation (EU) No 2015/63. The contribution calculated by the Board is that of an institution with a high risk profile and is the result of the Board's failure to take into consideration the criteria for defining and reducing risk laid down in those articles.

#### 5. Fifth plea in law: infringement of Articles 20 and 21 of the Charter of Fundamental Rights of the European Union — Equal treatment

- Article 5(1)(f) of Delegated Regulation (EU) No 2015/63 and Annex I thereto infringe the principle of equal treatment, in that they provide for discriminatory treatment in the sector concerned.

#### 6. Sixth plea in law: infringement of the principle of proportionality and legal certainty.

- Because the decisions do not take into account the applicant's lower risk profile, they impose an *ex ante* contribution corresponding to an institution with a high risk profile, thereby infringing the principles of proportionality and legal certainty.

7. Seventh plea in law: infringement of Article 16 of the Charter of Fundamental Rights of the European Union — Freedom to conduct a business
- By imposing stricter requirements than those laid down by European banking legislation and Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1), Delegated Regulation (EU) No 2015/63, as regards the institution's risk assessment, infringes the principles of equal treatment, legal certainty and freedom to conduct a business by introducing discretionary elements into the calculation of the *ex ante* contribution.

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**Action brought on 16 September 2016 — Cinkciarz.pl v EUIPO (€\$)**

(Case T-665/16)

(2016/C 402/72)

*Language of the case: Polish*

**Parties**

*Applicant:* Cinkciarz.pl sp. z o.o. (Zielona Góra, Poland) (represented by: E. Skrzydło-Tefelska, legal adviser, K. Gajek, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

**Details of the proceedings before EUIPO**

*Trade mark at issue:* European Union figurative mark containing the symbols '€' and '\$' — Application for registration No 13 839 998

*Contested decision:* Decision of the Fifth Board of Appeal of EUIPO of 14 July 2016 in Case R 2086/2015-5

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs of the proceedings.

**Pleas in law**

- Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009.
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