

*Trade mark at issue:* Application for European Union figurative mark DENIM HUNTER — Application for registration No 14 649 891

*Procedure before EUIPO:* Opposition proceedings

*Contested decision:* Decision of the Second Board of Appeal of EUIPO of 16 November 2018 in Case R 849/2018-2

### **Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- reverse the contested decision;
- order EUIPO to pay the costs including cost incurred by the applicant.

### **Plea in law**

- The Board of Appeal has erred in finding that a risk of confusion exists between the marks.

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## **Action brought on 8 February 2019 — Comune di Milano v Parliament and Council**

**(Case T-75/19)**

(2019/C 112/59)

*Language of the case: Italian*

### **Parties**

*Applicant:* Comune di Milano (represented by: F. Sciaudone, M. Condinanzi and A. Neri, lawyers)

*Defendants:* European Parliament, Council of the European Union

### **Form of order sought**

The applicant claims that the Court should:

- Annul Regulation (EU) 2018/1718 of the European Parliament and of the Council of 14 November 2018 amending Regulation (EC) No 726/2004 in so far as regards the location of the seat of the European Medicines Regulation ('EMA');
- declare the Council's decision of 20 November 2017 invalid, pursuant to point 6 of the procedural rules of 22 June 2017;
- order the Council and the European Parliament to pay the costs of these proceedings.

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

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

1. First plea in law, alleging infringement of the principles of representative democracy (Article 10 TEU), institutional balance and sincere cooperation (Article 13 TEU) as well as infringement of essential procedural requirements and Article 14 TEU.

- The applicant invokes the infringement of the principles at issue in so far as: (i) the seat of the EMA was selected by just one institution, the Council, on completion of the decision-making process resulting in the decision of 20 November 2017, which determined the content of the contested Regulation (namely the location of the seat of the EMA in Amsterdam) outside, and prior to the start of, the ordinary legislative procedure; (ii) throughout the selection procedure for the EMA's seat, in the course of which the decision-making process was exhausted, the Council and the Commission — the only two institutions involved in the selection procedure — did not involve the Parliament; (iii) using the ordinary legislative procedure, the Council and the Commission presented the Parliament with the *fait accompli* of the selection (already made) of the seat in Amsterdam; (iv) the Council and the Commission did not leave the Parliament any scope to assess or question that decision; instead, they made every effort to conclude the legislative procedure in the shortest possible time; (v) the Parliament was prevented from performing its own function, even though this is laid down in the Treaties, and during the ordinary legislative procedure was forced, against its will, to 'ratify' the decision taken by the Council.
2. Second plea in law, alleging misuse of powers and infringement of the principle of transparency, sound administration and fairness
- According to the applicant, the objective of the selection procedure was to identify the best offer for the relocation of the seat of the EMA in the light of pre-established objective selection criteria set out in the call for offers. Nevertheless, in the present case, the selection of the seat by balloting without any preliminary investigation did not allow for the verification of any lack of equivalence between the two applications of Milan and Amsterdam or for the selection of the best offer. Furthermore, the outcome of the vote of 20 November 2017 in favour of Amsterdam was a result of the Commission's failure to carry out an effective investigation and an incorrect understanding of the Dutch offer (as regards various essential aspects). Consequently, the Member States selected Amsterdam's application on the erroneous basis that it met the requirements laid down in the call for offers and the specific requirements of the Agency. Furthermore, the Dutch offer was modified *ex post* (making it worse) following the vote of 20 November 2017. The modifications to the offer were negotiated on a secret and bilateral basis. The defects in the decision of 20 November 2017 mean that the contested regulation is unlawful.
3. Third plea in law, alleging infringement of the principle of sound administration
- The applicant claims in that regard that the decision-making process which resulted in the selection of the new seat of the EMA was characterised by a lack of formal structure and procedures designed to guarantee the necessary transparency. The failure to carry out the necessary investigations and the subsequent bilateral and secret renegotiation of some of the essential conditions of the Dutch offer exacerbated the infringement of the principle of transparency. Moreover, many factors relevant to decision-making were not considered. The failure to carry out a proper assessment of the offers and the Commission's incorrect understanding of three essential aspects of the Dutch offer (surface area of the temporary seat, financial requirements and the fact that it could not guarantee the operational continuity of the Agency) exacerbated the infringement of the principle of sound administration.
4. Fourth plea in law, based on the Council's decision of 11 September 2009 relating to the adoption of its rules of procedure and alleging infringement of the procedural rules of the Council of 31 October 2017
- The applicant claims in that regard that the way in which the voting was conducted and the outcome of the vote are vitiated because the specific rules which the Council should have complied with were infringed, with the result that the decision of 20 November 2017 and contested regulation are unlawful.

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**Action brought on 12 February 2019 — Apostolopoulou and Apostolopoulou-Chrysanthaki v Commission**

**(Case T-81/19)**

(2019/C 112/60)

*Language of the case: Greek*

**Parties**

*Applicants:* Zoe Apostolopoulou and Anastasia Apostolopoulou-Chrysanthaki (Athens, Greece) (represented by: D. Gouskos, lawyer)