

Trade mark at issue: European Union figurative SmartThinQ mark — European Union trade mark No 14 983 861

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 3 February 2021 in Case R 1657/2020-4

Form of order sought

The applicant claims that the Court should:

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

Pleas in law

- Infringement of the principle of neutrality, in particular of Article 95(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council and the principle of equality of arms by disregarding Articles 16(2) in conjunction with Articles 2(2)(g) and 12(2)(c) of Commission Delegated Regulation (EU) 2018/625 which are based on Article 146(7) of Regulation (EU) 2017/1001 of the European Parliament and of the Council and linked to Article 25(2)(a) of Commission Implementing Regulation (EU) 2018/626;
- Infringement of Article 17(3) of Commission Delegated Regulation (EU) 2018/625;
- Infringement of Article 64(2)(3) in conjunction with Article 47(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by erroneously finding that the earlier trademark has been genuinely used for some goods;
- Infringement of Article 8(1)(b) in conjunction with Article 60(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 7 April 2021 — PKK v Council

(Case T-182/21)

(2021/C 217/66)

Language of the case: English

Parties

Applicant: Kurdistan Workers' Party (PKK) (represented by: A. van Eik and T. Buruma, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- annul Council Decision (CFSP) No 2021/142 and Council Implementing Regulation 2021/138 insofar as they concern the PKK (a.k.a. KADEK a.k.a. KONGRA-GEL);
- the Applicant additionally seeks an award of costs of litigation with interest, which will be specified at a later stage.

Pleas in law and main arguments

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

1. First plea in law, alleging that Council Decision (CFSP) 2021/142 ⁽¹⁾ and Council Implementing Regulation 2021/138 ⁽²⁾ are void insofar as they concern the applicant because they are in violation of the principle of legal certainty and/or of Article 1(2) of Council Common Position 2001/931/CFSP ⁽³⁾ and/or of Article 2(3) of Council Regulation No 2580/2001. ⁽⁴⁾ The applicant claims that the Council has failed to provide a clear and precise identification of the conceptualization of the PKK.
2. Second plea in law, alleging that Council Decision (CFSP) 2021/142 and Council Implementing Regulation 2021/138 are void insofar as they concern the applicant because the applicant cannot be qualified as a group or entity involved in terrorist acts as defined in Article 1(3) of Council Common Position 2001/931/CFSP.
3. Third plea in law, alleging that Council Decision (CFSP) 2021/142 and Council Implementing Regulation 2021/138 are void insofar as they concern the applicant because no decision by a competent authority has been taken in the meaning of Article 1(4) of Council Common Position 2001/931/CFSP.
4. Forth plea in law alleging that Council Decision (CFSP) 2021/142 and Council Implementing Regulation 2021/138 are void insofar as they concern the applicant because the Council has not conducted any proper review as required by Article 1(6) of Council Common Position 2001/931/CFSP.
5. Fifth plea in law, alleging that Council Decision (CFSP) 2021/142 and Council Implementing Regulation 2021/138 are void insofar as they concern the applicant because the decision and implementing regulation do not comply with the requirements of proportionality and subsidiarity.
6. Sixth plea in law, alleging that Council Decision (CFSP) 2021/142 and Council Implementing Regulation 2021/138 are void insofar as they concern the applicant because they do not comply with the obligation to state reasons in conformity with Article 296 of the Treaty on the Functioning of the European Union.
7. Seventh plea in law, alleging that Decision (CFSP) 2021/142 and Council Implementing Regulation 2021/138 are void insofar as they concern the applicant because they infringe upon the applicant's rights of defense and the applicant's right to effective judicial protection and remedy.

⁽¹⁾ Council Decision (CFSP) 2021/142 of 5 February 2021 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2020/1132 (OJ 2021 L 43, p. 14).

⁽²⁾ Council Implementing Regulation (EU) 2021/138 of 5 February 2021 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation (EU) 2020/1128 (OJ 2021 L 43, p. 1).

⁽³⁾ Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93).

⁽⁴⁾ Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70).

Action brought on 7 April 2021 — QP and Others v Council and Others

(Case T-183/21)

(2021/C 217/67)

Language of the case: French

Parties

Applicants: QP and 15 other applicants (represented by: N. de Montigny, lawyer)

Defendants: Council of the European Union, European Commission, European External Action Service (EEAS), and Eulex Kosovo