

Details of the proceedings before EUIPO

Applicant for the mark at issue: Applicant

Trade mark at issue: Application for EU work mark CODE-X — Application for registration No 17 893 826

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 4 February 2021 in Case R 208/2020-5

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- confirm the decision of the Opposition Division of 28 November 2018 rejecting the opposition brought against EU trade mark application No 17 893 826;
- order EUIPO to pay the costs.

Plea in law

- Infringement of 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 30 March 2021 — EurO3zon v ECHA

(Case T-199/21)

(2021/C 217/76)

Language of the case: English

Parties

Applicant: EurO3zon (Zemst, Belgium) (represented by: I. de Seze, F. Puel, and L. Marchal, lawyers)

Defendant: European Chemicals Agency

Form of order sought

The applicant claims that the Court should:

- annul the defendant's act to suspend the evaluation of the applicant's active substance dossier on Ozone (O₃), under the Biocidal products Regulation (¹), and to combine this evaluation procedure with another applicant's dossier; and
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant acted ultra vires and lacked the competence to adopt the contested act as the defendant enjoys no express or implicit power to act in the field of evaluations of biocidal active substances under EU law or mandatory data sharing in the absence of a legal provision.
 - Furthermore, it is argued that the justification alleged by the defendant for the contested act is a document that minutes the consensus of the European Commission and the Member States sitting at the Biocides Committee; it is neither adequate as its subject matter, nor binding in nature on the defendant.

2. Second plea in law, alleging that the defendant breached the principle of legal certainty and the applicant's legitimate expectations.
 - The contested act contains no reference or citation of any provision of law, which would empower the defendant to act in the way it did.
 - It is also argued that the contested act frustrates the applicant's legitimate expectations as it seeks to derogate from the express legal and procedural steps foreseen by the Biocidal products Regulation, in particular with regard to the mandatory timelines foreseen therein.
 - The legitimate expectations of the applicant are also frustrated by the contested act on the ground that the document referred to by the defendant, as a justification for the act, in fact concerns procedures and situations, which are irrelevant to the applicant's situation. The applicant also complains that the contested act creates legal uncertainty for operators.
3. Third plea in law, alleging that the defendant operated a discriminatory treatment towards the applicant.
 - It is argued that the contested act will result in the applicant being subjected to procedural requirements and delays, which have not been imposed on third parties in similar situations.
 - The contested act will result in the exclusive rights of the applicant's over proprietary information being infringed and being used for the benefit of third parties without financial compensation, a consequence that has not been imposed on third parties in similar situations.
 - Furthermore, the applicant complains that the confidential business information contained in its active substance dossier has been shared with third parties without permission and outside of a confidentiality commitment, a consequence that has not been imposed on third parties in similar situations.
4. Fourth plea in law, alleging that the contested act failed to state reasons because it did not disclose, in a clear and unequivocal fashion, the reasoning followed by the Agency, in such a way as to enable the applicant to ascertain the reasons for the measure and to enable the competent court to carry out its review.
5. Fifth plea in law, alleging that by adopting the contested act the defendant infringed the principle of proportionality because it does not bring about the appropriate steps for attaining the legitimate objectives pursued by it and it goes beyond what is necessary to achieve them.
 - Furthermore, it is argued that the measures entailed by the contested act do not constitute the least onerous measure to attain the objectives pursued by it.

(¹) Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ 2012 L 167, p. 1).

Action brought on 29 March 2021 — JS v EDPS

(Case T-200/21)

(2021/C 217/77)

Language of the case: English

Parties

Applicant: JS (represented by: L. Levi and A. Champetier, lawyers)

Defendant: European Data Protection Supervisor

Form of order sought

The applicant claims that the Court should:

- annul the decision of the EDPS dated 18 January 2021 rejecting the complaint of the applicant;