

Judgment of the General Court of 6 October 2021 — Power Horse Energy Drinks v EUIPO — Robot Energy Europe (UNSTOPPABLE)

(Case T-3/21) ⁽¹⁾

(EU trade mark — Invalidity proceedings — EU word mark UNSTOPPABLE — Absolute grounds for refusal — Distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 (now Article 7(1)(b) of Regulation (EU) 2017/1001) — Lack of descriptive character — Article 7(1)(c) of Regulation No 207/2009 (now Article 7(1)(c) of Regulation 2017/1001))

(2021/C 481/41)

Language of the case: German

Parties

Applicant: Power Horse Energy Drinks GmbH (Linz, Austria) (represented by: M. Woller, lawyer)

Defendant: European Union Intellectual Property Office (represented by: E. Markakis, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Robot Energy Europe (Mijas, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 6 October 2020 (Case R 232/2020-2), relating to invalidity proceedings between Power Horse Energy Drinks and Robot Energy Europe.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Power Horse Energy Drinks GmbH to pay the costs.

⁽¹⁾ OJ C 62, 22.2.2021.

Action brought on 18 August 2021 — TB v ENISA

(Case T-511/21)

(2021/C 481/42)

Language of the case: English

Parties

Applicant: TB (represented by: L. Levi and N. Flandin, lawyers)

Defendant: European Union Agency for Cybersecurity (ENISA)

Form of order sought

The applicant claims that the Court should:

- annul the decision taken by ENISA to renew the applicant's employment contract, in so far as it reassigns the applicant to a post with non-managerial functions, this decision being formalised by the signed version of the document sent by ENISA on 13 October 2020 and presented as an amendment of her contract and by the signature of such document by both the applicant and ENISA on 26 October 2020;
- in so far as necessary, annul the defendant's decision of 12 May 2021, rejecting the complaint lodged by the applicant under Article 90(2) of the Staff Regulations against the renewal decision;

- order the compensation of the material prejudice and the moral prejudice suffered by the applicant;
- order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the renewal decision is illegal, in so far as it results from the reorganisation process launched by ENISA, which, it is alleged, has not been carried out in the interests of the service — Breach of Article 7(1) of the Staff Regulations, breach of the principles of transparency and non-discrimination, and breach of Articles 18(1) and 20(2)(a) of Management Board decision MB/2018/14.
 - The reorganisation process is vitiated by a lack of clarity and transparency, by a breach of the principle of legal certainty, by a manifest error of assessment and by a violation of principle 6 of Decision MB/2020/5.
 - The reorganisation process is vitiated by a lack of motivation.
 - The reorganisation process has been carried out in violation of Annex 1 of the Administrative Notice.
 - The reorganisation process has been carried out in violation of principles 7 and 8 of Decision MB/2020/5, of the principle of good administration, of Article 41 of the Charter of Fundamental Rights and in violation of the duty of care.
2. Second plea in law, alleging that the renewal decision is illegal in so far as the applicant's contract was not renewed through a transparent and fair process — Breach of Article 1 of ED Decision 38/2017, and of point 5.1 of the Standard Operating Procedure, and breach of the duty of good administration.

Action brought on 2 September 2021 — TB v ENISA

(Case T-560/21)

(2021/C 481/43)

Language of the case: English

Parties

Applicant: TB (represented by: L. Levi and N. Flandin, lawyers)

Defendant: European Union Agency for Cybersecurity

Form of order sought

The applicant claims that the Court should:

- annul the decision taken by the ENISA Selection Board not to place the applicant's name on the list of successful candidates for the post of Head of Unit of the Executive Director Office (TA/AD 9) — Ref. ENISA-TA-70-AD- 2020-04;
- annul the decision taken by the ENISA Selection Board not to place the applicant's name on the list of successful candidates regarding the post of Head of Unit of Corporate Support Services (TA/AD 9) — Ref. ENISA TA71-AD-2020-05;
- annul also, in so far as necessary, the defendant's decision of 8 June 2021 rejecting the complaint lodged by the applicant under Article 90(2) of the Staff Regulations against the abovementioned decisions;
- order the compensation of the moral prejudice suffered by the applicant;
- order the defendant to pay all the costs.