

Regulations) and breach of the principle of equality of treatment and non-discrimination.

Action brought on 18 August 2003 by Agraz SA and 110 others against the Commission of the European Communities

(Case T-285/03)

(2003/C 251/34)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 August 2003 by the company Agraz SA and 110 other companies, represented by J.-L. da Cruz Vilaça, R. Oliveira, M.-J. Melícias and D. Choussy, lawyers.

The applicants claim that the Court should:

- order the defendant to pay each applicant company the balance of the production aid together with interest at a rate fixed by the Court of First Instance as from 12 July 2000 (or, in the alternative, as from 13 July 2000 or, further in the alternative, as from 16 July 2000) and until the actual day of payment;
- order the Commission to pay the costs, including those incurred by the applicants.

Pleas in law and main arguments

The present application seeks recognition of the extra-contractual liability of the Community arising from the damage allegedly suffered by the applicants as the result of the method used to calculate the amount of production aid for processed tomato products for the marketing year 2000/2001 under Commission Regulation (EC) No 1519/2000 of 12 July 2000 setting for the 2000/01 marketing year the minimum price and the amount of production aid for processed tomato products ⁽¹⁾.

Specifically, for the marketing year 2000/2001, the Commission took as its basis for calculating production aid the export prices of tomatoes from the United States, Israel and Turkey. It follows that the defendant did not take into account the export prices of China, although in 1999 it was the world's second largest producer of tomatoes. That basis for calculation significantly reduced production aid.

In support of their claims, the applicants argue that the conditions in the Bergadem case-law are fulfilled in the present case.

The applicants claim that that omission infringes the relevant basic regulation ⁽²⁾, that the regulation confers rights on individuals and that the powers of the Commission when Regulation No 1519/2000 was adopted were extremely limited, consisting merely in identifying the reference countries for the purposes of calculating the amount of the aid.

Finally, the Commission infringed the principles of good administration and legitimate expectations by failing to make the effort needed to learn the Chinese prices and by refusing, once it was notified of those prices, to amend the regulation.

⁽¹⁾ OJ L 174 of 13.7.2000, p. 29.

⁽²⁾ OJ L 297 of 21.11.1996, p. 29.

Action brought on 15 August 2003 by The Gillette Company against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-286/03)

(2003/C 251/35)

(Language of the case to be determined pursuant to Article 131(2) of the Rules of Procedure — language in which the application was submitted: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 15 August 2003 by The Gillette Company, Boston (USA), represented by L. Kouker, lawyer. Wilkinson Sword GmbH, Solingen (Germany), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 17 April 2003 in Case No R 221/2002-4;
- order the defendant Office to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for Community trade mark: The applicant

Community trade mark sought: Figurative mark 'XTREME RIGHT GUARD SPORT' in respect of goods in Class 3 (non-medicated preparations for use in the bath or shower; anti-perspirants; deodorants; all included in Class 3) — application No 1486745

Proprietor of mark or sign cited in the opposition proceedings: Wilkinson Sword GmbH

Mark or sign cited in opposition: The German figurative marks 'WILKINSON SWORD EXTREME' (Nos 399 23 715 and 399 45 175) in respect of goods in Class 3 (shaving cosmetics)

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Annulment of the decision of the Opposition Division and refusal of the applicant's application for registration

Pleas in law: — Infringement of Article 8(1) (b) of Regulation (EC) No 40/94;

— No likelihood of confusion;

— No similarity between the opposing marks.

Action brought on 13 August 2003 by TeleTech Holdings, Inc. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-288/03)

(2003/C 251/36)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 13 August 2003 by TeleTech Holdings, Inc., established in Denver, Colorado, (USA), represented by E. Armijo Chávarri and A. Castán Pérez-Gómez, lawyers.

The applicant claims that the Court should:

- annul the decision of the First Board of Appeal of OHIM of 28 May 2003 in Case R-412/2000-1 and, subject to the appropriate procedural steps, give judgment upholding either the applicant's principal claim or its alternative claim.

Pleas in law and main arguments

Community trade mark in respect of which declaration of invalidity sought: Word mark 'TELETECH GLOBAL VENTURES' — Registered trade mark No 134.908, for products in Classes 35 and 38.

Owner of the Community trade mark in respect of which declaration of invalidity sought: The applicant.

Person applying for a declaration of invalidity: Teletech International S.A. (owner of the national word mark 'TELETECH INTERNATIONAL'), in respect of certain goods within Class 35 (business management for technical services, customer relations and call centres) and Class 38 (telecommunications services).

Decision of the Cancellation Division: Application upheld in part

Decision of the Board of Appeal: Appeal upheld, solely in so far as the contested decision declared the Community mark in issue invalid in respect of 'business management assistance services consisting of facilities management and site selection services'.