Pleas in law and main arguments

The European Community, represented by the European Commission, entered into two contracts with a consortium on 11 March 1992 and 29 December 1993, respectively. One of the members of that consortium was a company for which the defendant was an associated contractor. Those contracts concerned, respectively, the KAVAS-2 A2019 project ('Knowledge acquisition visualisation and assessment system') and the ISAR-AIM A2052 project ('Integration System Architecture'), carried out under a specific research and technological development programme in the field of information technologies (1990 to 1994) adopted by Council Decision 91/394/EC [1].

The contracts set out the amounts of the eligible costs for the projects on the basis of which the Community financial contribution was calculated. In accordance with the provisions of those contracts, all payments made by the Commission were to be regarded as advance payments pending approval in the final report. If the total financial contribution to be paid by the Commission were to prove lower than the payments already made, the contracting parties undertook to repay the difference to the Commission without delay. The contracts also provided that the contracting parties were jointly and severally liable for any failure to meet contractual obligations, except where one of them failed to submit financial information or provided financial information that was false or incomplete. In those cases, the party concerned was to incur full liability.

Under the contracts, the consortium was required to submit regular statements of expenditure, as well as regular reports on the progress of the works.

The financial audit carried out by the Commission in 1996 disclosed several items of non-eligible expenditure invoiced by Premium SA. In its comments on the audit report, the defendant stated that it considered the report's rejection of a number of costs to be unacceptable. Following an exchange of correspondence with the defendant, the Commission issued debit notes to Premium SA, which contested them. In so far as certain advance payments taken into consideration by the Commission in its first debit notes had not been transferred to Premium SA by the coordinator, the Commission issued new debit notes itemising the amounts actually overpaid, while maintaining its position vis-à-vis the findings of the audit report regarding the non-eligible expenditure invoiced by the defendant. The new notes were also contested by Premium SA.

Several times the Commission presented requests for payment again where earlier requests had elicited no reaction from the defendant. As a consequence, on the basis of the arbitration clauses contained in the contracts, the Commission has brought the present proceedings claiming that the Court should order Premium SA to reimburse part of the advance payment made by the Community, together with default interest, on the ground that the defendant has failed to substantiate by relevant argument its refusal to accept the Commission's position regarding the expenditure that the audit report found to be non-eligible.

[1] OJ 1991 L 218, p. 22.

Action brought on 23 November 2006 — Panrico S.L. v OHIM — HDN Development ('Krispy Kreme DOUGHNUTS')

(Case T-317/06)

(2006/C 326/144)

Language in which the application was lodged: Spanish

Parties

Applicant: Panrico S.L. (Unipersonal) (Santa Perpètua de Mogola, Barcelona, Spain) (represented by: D. Pellisé Irquiza, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal of OHIM: HDN Development Corporation

Form of order sought

— annul the decision of the First Board of Appeal of OHIM of 8 August 2006 in the appeal in Case R 0194/2005-1 relating to opposition proceedings No B 303 992 which refused Community trade mark application No 1 298 785;

— order the Office and HDN Development Corporation the applicant for Community trade mark No 1 298 785 to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: HDN Development Corporation.

Community trade mark concerned: Figurative mark with the words 'KRISPY KREME DOUGHNUTS' (Application No 1 298 785) for goods in Classes 25 and 30 and for services in Class 42.

Proprietor of the mark or sign cited in the opposition proceedings: The applicant.

Mark or sign cited in opposition: Spanish word marks 'DOGHNUTS' (No 1 288 926) and 'DONUT' (No 399 563) for goods in Class 30 and the figurative mark 'donuts' for goods in Class 25 and services in Class 42.

Decision of the Opposition Division: Opposition dismissed.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Incorrect application of Article 8(1)(b) and 5 of Regulation (EC) No 40/94 on the Community trade mark. The applicant submits, in that regard, that the Community trade mark which is the subject of these proceedings has as its main component the word 'DOUGHNUTS', which may be confused with the family of opposing marks DONUT-DONUTS-DOGHNUTS applied to the same goods and services, giving rise to a serious risk of confusion on the part of the Spanish public.

Action brought on 27 November 2006 — Moreira da Fonseca v OHIM — General Óptica (GENERAL OPTICA)

(Case T-318/06)

(2006/C 326/145)

Language in which the application was lodged: English

Parties

Applicant: Alberto Jorge Moreira da Fonseca L[da] (Santo Tirso, Portugal) (represented by: M. Oehen Mendes, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: General Óptica SA (Barcelona, Spain)

Form of order sought

— Annul the decision of the First Board of Appeal of OHIM of 8 August 2006 notified to the applicant 4 October 2006, in cancellation proceedings No 827C (Case No R 947/2005-1) and consequently declare Community trade mark No 573 592 'GENERAL OPTICA' filed on 10 July 1997 and registered on 13 September 1999, as invalid, or in the alternative, revoked;

— order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark 'GENERAL OPTICA' for services in class 42 (Opticians' services) — Community trade mark No 573 592

Proprietor of the Community trade mark: General Óptica SA

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The earlier national trade name 'Generalóptica' for import and retail sale of optical, precision and photographic apparatus

Decision of the Cancellation Division: Rejection of the request for a declaration of invalidity

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of among others Article 8(1) and (4) of Council Regulation No 40/94 as there is a likelihood of confusion between the two signs and the applicant's sign is granted national protection.

Infringement of Rule 22 of Commission Regulation No 2868/95 as OHIM omitted its duty to ask the applicant to present evidence of the earlier use invoked.

Action brought on 27 November 2006 — Moreira da Fonseca v OHIM — General Óptica (GENERAL OPTICA)

(Case T-319/06)

(2006/C 326/146)

Language in which the application was lodged: English

Parties

Applicant: Alberto Jorge Moreira da Fonseca L[da] (Santo Tirso, Portugal) (represented by: M. Oehen Mendes, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: General Óptica SA (Barcelona, Spain)

Form of order sought

— Annul the decision of the First Board of Appeal of OHIM of 8 August 2006 notified to the applicant 27 September 2006, in cancellation proceedings No 828C (Case No R 944/2005-1) and consequently declare Community trade mark No 2 436 798 'GENERAL OPTICA' filed on 5 November 2001 and registered on 20 November 2002, as invalid, or in the alternative, revoked;

— order the defendant to pay the costs.