

In support of his appeal, the applicant raises three pleas in law.

The first alleges infringement of Article 7(1) and (3) of Annex I to the Statute of the Court of Justice, infringement of Article 20 of that Statute, and procedural irregularity adversely affecting the interests of the applicant. He argues that recourse to Article 111 of the Rules of Procedure of the Court of First Instance, applicable *mutatis mutandis* to the procedure before the Civil Service Tribunal, on the basis of which the contested order was made, could not take place after two exchanges of memoranda and an exchange of notes of observations, that is to say where the ordinary procedure applied. In those circumstances, the applicant argues, the Court could not rule on inadmissibility before the oral procedure.

The second plea, put forward in the alternative, alleges infringement of Article 111 of the Rules of Procedure of the Court of First Instance and irregularity in the procedure following from it. In the applicant's submission, the contested order could not have been issued on the basis of that provision without following the procedure and in particular without the oral phase, given that the advocate general had not been heard and the inadmissibility claimed was not obvious.

The third plea, raised further in the alternative, alleges infringement of the principle of the right to a fair hearing, in that the Civil Service Tribunal impliedly held that one of the annexes to the rejoinder constituted proof that the procedure in question was inadmissible, before the applicant had even had a chance to give explanations concerning that document.

Appeal brought on 27 June 2007 by Michel Thierry against the order of the Civil Service Tribunal delivered on 16 April 2007 in Case F-82/05, Thierry v Commission

(Case T-223/07 P)

(2007/C 199/79)

Language of the case: French

Parties

Appellant: Michel Thierry (Howald, Grand Duchy of Luxembourg) (represented by: F. Frabetti, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

- set aside the order of the Civil Service Tribunal of 16 April 2007 in Case F-82/05, notified to the applicant on 17 April 2007;
- grant the forms of order sought by the appellant at first instance and, consequently, declare the application in Case F-82/05 to be admissible and well-founded;
- in the alternative, refer the case back to the Civil Service Tribunal;
- make an order as to costs, expenses and fees and order the Commission to pay them.

Pleas in law and main arguments

In his appeal, the appellant seeks to have set aside the order of the Civil Service Tribunal, which rejected in part as manifestly inadmissible and in part as manifestly unfounded the action for annulment of the list of officials promoted under the 2004 promotion procedure, in so far as that list does not include his name.

In support of his appeal, the appellant puts forward a single plea alleging an error of interpretation and of assessment of the facts, which led to a procedural error and an error of law by the Civil Service Tribunal in so far as it did not grant the application, as set out in the reply at first instance, for a member of the service in which the appellant was employed to be heard.

Action brought on 22 June 2007 — Imperial Chemical Industries v OHIM (LIGHT & SPACE)

(Case T-224/07)

(2007/C 199/80)

Language of the case: English

Parties

Applicant: Imperial Chemical Industries plc (London, United Kingdom) (represented by: S. Malynicz, Barrister, and V. Chandler, Solicitor)

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

Form of order sought

- The decision of the First Board of Appeal dated 30 March 2007 in Case R 1631/2006-1 shall be annulled.
- The Office shall bear its own costs and pay those of the applicant.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'LIGHT & SPACE' for goods in class 2 — application No 5 147 756

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the Board of Appeal regarded the trade mark in question as if it were an advertising slogan, indication of quality or incitement to purchase without considering whether the trade mark could also be an indication of origin.

Furthermore, the Board of Appeal erred in its examination of the trade mark as a whole and in its examination of its component parts and committed an error of law by requiring that the trade mark combines words that are unusual or out of the ordinary in relation to the goods in question in order to acquire distinctive character.

Finally the Board of Appeal did not assess distinctiveness in relation to the specific goods applied for.

Proprietor of the mark or sign cited in the opposition proceedings: Vallon GmbH.

Mark or sign cited in opposition: Community figurative mark No 51.037 (the letter V against a white background), for goods in class 9 (Apparatus for checking and supervising).

Decision of the Opposition Division: Opposition upheld and application for a Community mark for goods in class 9 rejected.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark.

Action brought on 29 January 2007 — Vitro Corporativo v OHIM — VALLON (V)

(Case T-229/07)

(2007/C 199/81)

Language in which the application was lodged: Spanish

Parties

Applicant: Vitro Corporativo, S.A. de C.V. (represented by: J. Botella Reyna, 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: Vallon GmbH.

Form of order sought

— order that the subject matter of the action be registered as a Community trade mark to distinguish goods in class 9.

Pleas in law and main arguments

Applicant for a Community trade mark: Vitro Corporativo, S.A. de C.V.

Community trade mark concerned: Figurative mark consisting of a letter 'V' (application No 2.669.513) for goods and services in classes 1, 7, 8, 9, 11, 12, 16, 17, 19, 20, 21, 22, 27, 30, 35, 39, 40, 41, 42 and 43.

Action brought on 2 July 2007 — Laboratorios Del Dr. Esteve v OHIM — Ester C (ESTER-E)

(Case T-230/07)

(2007/C 199/82)

Language in which the application was lodged: English

Parties

Applicant: Laboratorios Del Dr. Esteve, SA (Barcelona, Spain) (represented by: K. Manhaeve, lawyer)

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

Other party to the proceedings before the Board of Appeal: Ester C Company (Prescott, United States)

Form of order sought

— Annul the decision of the Second Board of Appeal R 737/2006-2 of 17 April 2007;

— order the defendant and — if applicable — Ester C Company to pay all the costs (jointly and severally).

Pleas in law and main arguments

Applicant for the Community trade mark: The Ester C Company

Community trade mark concerned: The Community word mark 'ESTER-E' for goods and services in Class 3 and 5 — application No 3163946

Proprietor of the mark or sign cited in the opposition proceedings: Laboratorios Del Dr. Esteve SA

Mark or sign cited: The Community figurative mark 'ESTEVE' for goods in Class 1, 5 and 42 and the national figurative mark 'ESTEVE' and 'ESTEVE-LABORATORIO DEL DR. ESTEVE S.A.' for goods in Class 5