

### Pleas in law and main arguments

The pleas and arguments relied upon are similar to those in Case T-234/04 *Netherlands v Commission* (previously Case C-103/04) <sup>(1)</sup>.

<sup>(1)</sup> OJ 2004 C 94, p. 30.

### Action brought on 16 August 2007 — Cemex UK Cement v Commission

(Case T-313/07)

(2007/C 235/46)

*Language of the case: English*

### Parties

*Applicant:* Cemex UK Cement Ltd (Thorpe, United Kingdom), (represented by: S. Tromans, C. Thomann, lawyers, D. Wyatt QC and S. Taylor, Solicitor)

*Defendant:* Commission of the European Communities

### Form of order sought

— to annul the Commission Decision of 12 June 2007, notified to the applicant, and received on 21 June 2007, rejecting the complaint made by Cemex UK Cement Limited concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by the United Kingdom in accordance with Directive 2003/87/EC of the European Parliament and the Council;

— order the Commission to pay the applicant's costs.

### Pleas in law and main arguments

This application seeks annulment of a Commission decision contained in a letter dated 12 June 2007 and received by the applicant on 21 June 2007, rejecting a complaint filed by the applicant concerning the national allocation plan for Phase II of the EU Emissions Trading Scheme notified by the United Kingdom in accordance with directive 2003/87/EC <sup>(1)</sup> of the European Parliament and the Council.

The applicant complained to the European Commission that the reduction of allowances under the latter national allocation plan, in respect of the applicant's Rugby plant, along with the resulting over-allocation in respect of installations operated by the applicant's competitors, amounted to unlawful State aid, which allegedly:

(a) unlawfully discriminates against the Rugby plant by failing to take sufficient account of the latter plant's period of commissioning, and by basing the allocation to the plant on

a period of emissions which the UK authorities knew to be unrepresentative;

(b) impedes the right of establishment of the applicant's parent company, Cemex Espana SA.

The applicant further contends that the Commission was wrong to see no incompatible aid deriving from the 'First Year Rule' and accordingly wrong to decline to initiate proceedings under Article 88(2) EC. In that sense, the applicant claims the Commission was wrong to conclude that the allocation methodology of allowances applied by the United Kingdom to the Rugby plant was not discriminatory and was consistent with Commission guidance.

<sup>(1)</sup> Directive 2003/87/EC of the European Parliament and of the Council concerning the establishment of a scheme for greenhouse gas emission allowance trading in the Community and amending Council Directive 96/61/EC (OJ L 275, p. 32).

### Action brought on 22 August 2007 — Simalagrimm Filmproduktion v Commission and EACEA

(Case T-314/07)

(2007/C 235/47)

*Language of the case: German*

### Parties

*Applicant:* Simalagrimm Filmproduktion GmbH (Munich, Germany) (represented by: D. Reich and D. Sharma, lawyers)

*Defendants:* Commission of the European Communities and Education, Audiovisual and Culture Executive Agency (EACEA)

### Form of order sought

— Annul the Decision Debit Note No 3240905584 of 20 June 2007;

— order the defendants to pay the costs.

### Pleas in law and main arguments

In 1998, the applicant and the Commission signed a contract relating to support for a computer-animated cartoon series within the framework of the MEDIA II — Development and distribution programme <sup>(1)</sup>. By letter of 20 June 2007, EACEA demanded reimbursement by the applicant of all of the monies advanced pursuant to that contract. The applicant brought the present action to contest that decision.

The applicant claims, first, that EACEA was not formally competent to take the contested decision, as it is the Commission that remains competent in that regard.

Further, the applicant submits that the contested decision is unlawful because of a breach of the duty to provide reasons for the acts of an authority for the purposes of Article 256 EC.

In addition, the applicant's rights of defence have been infringed inasmuch as its application to inspect the file was rejected, thus making it impossible for the applicant to determine the criterion used to justify the demand for repayment.

The applicant complains also that the support contract was not validly terminated, and that the conditions for its termination also did not exist. In that regard, it claims, inter alia, that the termination of the contract and the demand for repayment of the financial support advanced constitute an infringement of the principle of protection of legitimate expectations.

(<sup>1</sup>) Council Decision 95/563/EC of 10 July 1995 on the implementation of a programme encouraging the development and distribution of European audiovisual works (Media II — Development and distribution) (1996-2000) (OJ 1995 L 321, p. 25).

#### Action brought on 22 August 2007 — Grohe v OHIM — Compañía Roca Radiadores (ALIRA)

(Case T-315/07)

(2007/C 235/48)

*Language in which the application was lodged: German*

#### Parties

*Applicant:* Grohe AG (Hemer, Germany) (represented by: A. Lensing-Kramer, 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:* Compañía Roca Radiadores, S.A.

#### Form of order sought

- Annul the decision of the Fourth Board of Appeal of 19 June 2007 in Case R 850/2006-4;
- alternatively, annul or amend the contested decision in so far as it finds that there is a similarity of goods between 'kitchen faucets' and 'cast-iron bathtubs' and, consequently, a likelihood of confusion between the opposing signs;
- alternatively, annul or amend the contested decision in so far as it finds that there is a phonetic similarity in Spain between the mark applied for and the opposing mark and,

consequently, in that respect a likelihood of confusion between the opposing signs;

- alternatively, annul or amend the contested decision in so far as it finds that there is a lack of recognition in Spain of the name AKIRA in relation to a Japanese comic and, consequently, in that respect a likelihood of confusion between the opposing signs;
- order the Office for Harmonisation in the Internal Market to pay the costs.

#### Pleas in law and main arguments

*Applicant for a Community trade mark:* The applicant.

*Community trade mark concerned:* Word mark 'ALIRA' for goods in Class 11 (Application No 2 766 640).

*Proprietor of the mark or sign cited in the opposition proceedings:* Compañía Roca Radiadores, S.A.

*Mark or sign cited in opposition:* Spanish word mark 'AKIRA' for goods in Class 11 (No 2 045 604).

*Decision of the Opposition Division:* Opposition allowed; registration refused.

*Decision of the Board of Appeal:* Appeal dismissed.

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 (<sup>1</sup>), as there is no likelihood of confusion between the opposing marks.

(<sup>1</sup>) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

#### Action brought on 20 August 2007 — Commercy v OHIM — easyGroup IP Licensing (easyHotel)

(Case T-316/07)

(2007/C 235/49)

*Language in which the application was lodged: German*

#### Parties

*Applicant:* Commercy AG (Weimar, Germany) (represented by: F. Jaschke, 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:* easyGroup IP Licensing Limited