

Non-existence of the irregularity detected and infringement of the terms of the agreement concluded by the Commission and the Caixa Geral de Depósitos on 15 November 1995 by the Commission in the contested decision. The irregularity referred to by the Commission in the contested decision is groundless, for no account has been taken of Articles 5 and 6 of the Agreement, which allow the remaining future payments to be put back to 31 December 2001.

**Action brought on 15 October 2007 — Earth Products v OHIM — Meynard Designs (EARTH)**

(Case T-389/07)

(2007/C 297/91)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Earth Products, Inc. (Carlsbad, United States) (represented by: M. Graf, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Meynard Designs, Inc. (Waltham, United States)

**Form of order sought**

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 9 August 2007 insofar as it has upheld the decision of the Opposition Division;
- order the defendant to bear its own costs and to pay those of the applicant.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark 'EARTH' for goods in class 25 — application No 2 907 608

*Proprietor of the mark or sign cited in the opposition proceedings:* Meynard Designs, Inc.

*Mark or sign cited:* The Community and national figurative mark 'EARTH' for goods in classes 3, 14, 18, 25 and 35

*Decision of the Opposition Division:* Opposition upheld in its entirety

*Decision of the Board of Appeal:* Dismissal of the appeal

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the conflicting trade marks are not visually or phonetically similar.

**Appeal brought on 11 October 2007 by Michael Alexander Spenser against the judgment of the Civil Service Tribunal delivered on 10 September 2007 in Case F-146/06, Speiser v Parliament**

(Case T-390/07 P)

(2007/C 297/92)

*Language of the case: German*

**Parties**

*Appellant:* Michael Alexander Spenser (Ixelles, Belgium) (represented by F. Theumer, lawyer)

*Other party to the proceedings:* European Parliament

**Form of order sought by the appellant**

- Annul paragraphs 1 and 2 of the operative part of the decision of the Civil Service Tribunal in full;
- Annul paragraph 3 of the operative part of the decision of the Tribunal in so far as it does not order the other party to pay all the costs.

**Pleas in law and main arguments**

The appeal is directed against the decision of the Civil Service Tribunal of 10 September 2007 in Case F-146/06, *Speiser v Parliament*, by which the appellant's application was dismissed as being manifestly inadmissible.

The appellant submits, in support of his appeal, first of all, that the evidence relevant to the ruling presented by both parties was in part not assessed, contradictorily and/or not properly assessed. He further argues that the Civil Service Tribunal failed to apply the principles of good faith and sound administration to the whole of its decision. Finally, the appellant contends that, by the disputed decision, the Civil Service Tribunal departs from its ruling of 28 June 2006 in Case F-101/05, *Grundheid v Commission*.