

Pleas in law and main arguments

By the present action, which is based on an arbitration clause, the applicant requests that the Court find that the debit notes of 25 September 2008, 26 March 2009 and 26 May 2009, by which the Commission called, following an audit report by OLAF, for the recovery of advances paid to the applicant, are inconsistent with the clauses of the contracts IST-2001-35077 DIAS.NET and IST-1999-20896 MEDIS concluded in the context of a specific programme for Community research, technological development and demonstration activities in the field of the information society (1998-2002). In the alternative, the applicant submits a claim for damages.

In support of its action, the applicant relies on four pleas in law.

By its first plea, it disputes that the debt claimed by the Commission is due and submits that all the costs it declared to the Commission should be regarded as eligible.

By its second plea, it submits that the Commission infringed the obligation to cooperate in good faith in performing the contract in the sense that it did not properly carry out its own contractual obligations, in particular by waiting for a long time before replying to the proposal for additional action submitted by the applicant and by wrongfully terminating the MEDIS contract on the basis of inadequate results even though that issue had never been raised previously and could, in the applicant's view, only have been attributed to the Commission.

By its third plea, the applicant invokes the disproportionate nature of the pecuniary sanction imposed by the Commission for the alleged failure to comply with certain accounting obligations which, even if they were to be proven to exist, would not give rise to a right, in accordance with the principles of Belgian administrative and civil law, to reimbursement of almost all of the advances agreed to. Consequently, the applicant maintains that it has a right to compensation in respect of the services carried out.

By its fourth plea, the applicant maintains that the Commission failed to comply with the principle of sound administration and of the rights to a fair hearing in the management of the verification and audit process.

Action brought on 23 June 2009 — Cesea Group Srl v OHIM — Mangini & C. (mangiami)

(Case T-250/09)

(2009/C 193/49)

Language in which the application was lodged: Italian

Parties

Applicant: Cesea Group Srl (Rome, Italy) (represented by: D. De Simone, lawyer, D. Demarinis, lawyer, J. Wrede, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Mangini & C. Srl (Sestri Levante, Italy)

Form of order sought

— Cesea Group Srl seeks the annulment — or, in the alternative, the amendment and limitation, in accordance with its pleas in law — of the decision taken on 20 April 2009 and notified on 24 April 2009 by the Second Board of Appeal of OHIM, by which it decided Case No R 982/2008-2, which had been brought following the outcome of invalidity proceedings No 2063 C brought by Mangini & C. Srl.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Figurative mark containing the term 'mangiami' (application for registration No 3 113 933) for goods in Classes 29, 30 and 32.

Proprietor of the Community trade mark: The applicant.

Applicant for the declaration of invalidity: Mangini & C. Srl.

Trade mark right of applicant for the declaration: Italian registration No 819 926 of the word mark 'MANGINI' for goods and services in Classes 30 and 42; Italian figurative mark No 668 388, which contains the term 'Mangini', for goods and services in Classes 30 and 42; Italian figurative mark No 648 507, which contains the term 'Mangini', for goods in Class 30; international registration No 738 072 of the word mark 'MANGINI' for goods and services in Classes 30 and 42; word mark 'MANGINI' which, in Italy, is well known within the meaning of Article 6bis of the Paris Convention, for 'production of pastries, confectionery, coffee, ices and sweet goods in general, bar, cafeteria and catering services'; and the trade name 'MANGINI', used in Italy by way of normal commercial practice, for 'production of pastries, confectionery, coffee, ices and sweet products in general, bar, cafeteria and catering services'.

Decision of the Cancellation Division: Dismissed the application for a declaration of invalidity.

Decision of the Board of Appeal: Annulled the contested decision and upheld in part the application for a declaration of invalidity.

Pleas in law:

— Infringement of Rule 40(6) of Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark, ⁽¹⁾ in that the Board of Appeal based the decision on an examination of documents which had not been produced before the Cancellation Division, even though the documents in question had not been available and had not been produced within the period specified by the Cancellation Division;

- Unlawfulness of the declaration of invalidity in relation to the goods in Class 29, which is not covered by the international trade mark of Mangini & C. Srl, and to the goods in Class 30, which are not similar to sweets.

(¹) OJ L 303 of 15.12.1995, p. 1.

Action brought on 26 June 2009 — Société des Pétroles Shell v Commission

(Case T-251/09)

(2009/C 193/50)

Language of the case: French

Parties

Applicant: Société des Pétroles Shell (Colombes, France) (represented by: P. Hubert, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Annul, in its entirety or in part, the implied negative response of the Commission of 9 May 2009 to the request for access to documents held by the Commission (reference GESTDEM 372/2009) and draw all the appropriate conclusions therefrom with regard to the applicant's access to the documents requested;
- In the alternative, should the Court consider it a decision, annul, in its entirety or in part, the letter of 7 May 2009 from the Secretariat General of the Commission stating that it is not possible to reply to the applicant's request for access to the Commission documents (reference GESTDEM 372/2009) and draw all the appropriate conclusions therefrom with regard to the applicant's access to the documents requested;
- Order the Commission to pay all the costs.

Pleas in law and main arguments

By the present action, the applicant seeks annulment of the implied decision of the Commission refusing it access to all the correspondence, relating to the enquiry into practices on the jet fuel supply market in La Réunion, held by the Commission or exchanged by the Commission and the French competition authority, in particular under Article 11(4) of Regulation No 1/2003. In the alternative, should the Court consider it an express decision of refusal, the applicant seeks annulment of the letter of the Secretariat General which states that the Commission is not in a position to reply to the request made by the applicant for access to the documents.

In support of its action, the applicant raises pleas in law identical or similar to those raised in Case T-245/09 *Shell Hellas v Commission*.

Action brought on 30 June 2009 — Caixa Geral de Depósitos v OHIM — Caixa d'Estalvis i Pensions de Barcelona ('la Caixa')

(Case T-255/09)

(2009/C 193/51)

Language in which the application was lodged: Spanish

Parties

Applicant: Caixa Geral de Depósitos (Lisbon, Portugal) (represented by: F. de la Rosa and M. Lobato García-Miján, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Caixa d'Estalvis i Pensions de Barcelona

Form of order sought

- annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 24 March 2009 based on Article 8(1)(b) of the Regulation on the Community trade mark;
- alternatively, annul the earlier decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 24 March 2009 based on Article 7(1)(b) of the Regulation on the Community trade mark;
- order OHIM and, if appropriate, the intervener, to pay the costs incurred in these proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: CAIXA D'ESTALVIS I PENSIONS DE BARCELONA

Community trade mark concerned: Figurative mark which contains the verbal element 'la Caixa' (Application No 4 685 145) for goods and services in classes 9, 16, 36, 38 and 45.

Proprietor of the mark or sign cited in the opposition proceedings: CAIXA GERAL DE DEPOSITOS S.A.

Mark or sign cited in opposition: Various Portuguese word marks which contain the prefix 'caixa' (Nos 357 311, 261 198, 268 466, 302 708, 303 290, 325 155, 325 156, 325 224, 330 542 and 342 311) for goods and services in classes 9, 16 and 36, and Portuguese figurative mark (No 357 310) which contains the word 'caixa' for goods and services in classes 9, 16 and 36.