

3. Infringement of the Guidelines, which also constitutes a significant procedural defect, infringement of the principles of non-discrimination and equal treatment, of the principle of sound administration and sound financial management, of the right of every person to be heard, before any individual measure which would affect him or her adversely is taken (Article 41(2)(a) of the Charter), of the Office's duty to have regard for the welfare of its staff and of the duty to take into account the legitimate interests of the applicant, manifest error of assessment in its balancing of the applicant's interests with those of the service, infringement of the principle of non-arbitrariness
4. Infringement of the second and third sentences of the first paragraph of Article 8 CEOS and of the prohibition on repeated fixed-term employment

In this regard the applicant claims that, in a flagrant effort to avoid the legal consequences of the third sentence of the first paragraph of Article 8 CEOS, EUIPO repeatedly entered into contracts for the applicant's fixed-term employment pursuant to Article 2(b) and 2(a) CEOS, despite the fact that the applicant's activities remained unchanged during that time. Consequently, the applicant's first contract remains valid for an unlimited period of time without a termination clause.

5. Unlawful retention of a termination clause in the context of the Reinstatement Protocol and infringement of legitimate expectations, the applicant's legitimate interests and the duty to have regard for the welfare of its staff when exercising the clause

By its fifth plea in law, the applicant complains that EUIPO should no longer have been able to exercise the termination clause after the long period of time that had elapsed since the signing of the contract in 2005.

6. Infringement of the applicant's legitimate expectations, of the duty of the Office to have regard for the applicant's welfare and failure to take into account her legitimate interests, manifest error of assessment in the assessment of the interests of the service

In the sixth plea in law, the applicant complains that EUIPO's decision not to renew her employment contract infringes her legitimate expectations, the Office's duty to have regard for the applicant's welfare and the applicant's legitimate interests. At the same time, taking account of the applicant's very good performance, it also represents a manifest error of assessment with regard to the interests of the service.

7. Infringement of the terms of the termination clause in Article 5 of the applicant's employment contract

In the seventh plea in law, the applicant complains that, when EUIPO exercised the termination clause, it wrongly applied Article 47(b)(ii) CEOS, instead of Article 47(c)(i), as is laid down in the termination clause, and that the notice period should have been 10 months, instead of the 6 month period established by EUIPO.

⁽¹⁾ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p. 43).

**Action brought on 11 September 2018 — ASL Aviation Holdings and ASL Airlines (Ireland)/
Commission**

(Case T-540/18)

(2018/C 399/64)

Language of the case: English

Parties

Applicants: ASL Aviation Holdings DAC (Swords, Ireland) and ASL Airlines (Ireland) Ltd (Swords) (represented by: N. Travers, Senior Counsel, H. Kelly, K. McKenna and R. Scanlan, Solicitors)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- hold the defendant liable on the basis of Article 268 TFEU and the second paragraph of Article 340 TFEU for the damages incurred by the applicants in the sum of approximately EUR 263,6 million, or such other sum as the Court may rule to be appropriate, arising from the unlawfulness of Commission Decision C(2013) 431, Case COMP/M.6570 UPS/TNT Express, of 30 January 2013 prohibiting a concentration between UPS and TNT Express NV and consequently the Commission's breach of ASL's entitlement to sound administration;
- hold the defendant liable to pay default interest, starting from the date of delivery of the Court's judgment determining this action until full payment, at the rate set by the European Central Bank for its main refinancing operations, increased by two percentage points, on the sum of EUR 263,6 million or on such other sum as the Court may rule to be appropriate; and
- order the defendant to pay the costs of these proceedings.

Pleas in law and main arguments

The applicants seek compensation for the loss allegedly suffered as a consequence of Commission Decision C(2013) 431, Case COMP/M.6570 UPS/TNT Express ('the Decision') which was annulled by the judgment of 7 March 2017, *United Parcel Service v Commission*, T-194/13, EU:T:2017:144.

In support of the action, the applicants rely on five pleas in law.

1. First plea in law, alleging that the Decision is tainted with serious breaches of rules of law that are intended to confer protection on individuals, including the applicants, as a direct consequence of which the applicants were precluded from realising the benefits associated with agreements they had entered into in November 2012.
2. Second plea in law, alleging that the defendant's conduct in significantly failing to follow proper procedures in its merger-control review assessment of the notified concentration, which resulted in the annulment of the Decision, so departed from an approach commensurate with the applicants' rights to good administration and due diligence by the defendant in the exercise of that assessment, as guaranteed by Article 18(3) of Council Regulation (EC) No 139/2004⁽¹⁾, Article 41 of the Charter of Fundamental Rights of the European Union and by the general principles of EU law, that it breached rules of law that are intended to confer protection on all individuals directly affected by the Decision, including the applicants.
3. Third plea in law, alleging that the Decision is further tainted with manifest and serious defects affecting the defendant's assessment therein of the notified concentration, as claimed by UPS in the action for non-contractual liability brought by it against the Commission in Case T-834/17 — upon which, in the interest of the sound and efficient administration of justice, the applicants rely, insofar as is necessary to sustain their damages claim — with regard to: the price concentration analysis, the efficiencies analysis, the assessment of FedEx's competitiveness and the assessment of the closeness of competition made by the defendant in the Decision.
4. Fourth plea in law, alleging that the applicants are entitled to damages for the non-contractual liability of the defendant resulting from its having, in unlawfully making the Decision and preventing the notified concentration, infringed the applicants' freedom to conduct a business and their right to property as protected by Articles 16 and 17 of the Charter of Fundamental Rights of the European Union, as well as by the general principles of EU law.

5. Fifth plea in law, alleging that these breaches in turn caused the applicants' losses, because, had they not occurred, the applicants would have been in a position to realise the benefits of the agreements they had entered into in November 2012, with the result that the applicants should now be put, by way of reparatory compensation, in the position they would have been in but for the unlawfulness of the Decision, and this action is the sole means of ensuring that they can be so compensated.

(¹) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

Action brought on 17 September 2018 — Wanda Films and Wanda Visión v EUIPO — Dalian Wanda Group Co. (wanda films)

(Case T-542/18)

(2018/C 399/65)

Language of the case: English

Parties

Applicants: Wanda Films, SL (Pozuelo de Alarcón, Spain) and Wanda Visión, SA (Pozuelo de Alarcón) (represented by: C. Planas Silva, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Dalian Wanda Group Co. Ltd (Dalian, China)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Wanda Films, SL

Trade mark at issue: Application for European Union figurative mark wanda films — Application for registration No 13 902 994

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 6 July 2018 in Case R 829/2017-5

Form of order sought

The applicant claims that the Court should:

- admit the present application, the arguments and documents (including the ones presented with this application and the ones presented by the applicant during the opposition and appeal proceedings);
- override the contested decision;
- issue a decision that admits the registration of the figurative trademark defended by the applicant with the present application.

Plea in law

- Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.
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