ISSN 1725-2423

Official Journal of the European Union

C 8

Volume 51

English edition

Information and Notices

12 January 2008

Notice No | Contents | Page

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

(Continued on inside back cover)

EN

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2008/C 8/01)

Last publication of the Court of Justice in the *Official Journal of the European Union*

OJ C 315, 22.12.2007

Past publications

OJ C 297, 8.12.2007

OJ C 283, 24.11.2007

OJ C 269, 10.11.2007

OJ C 247, 20.10.2007

OJ C 235, 6.10.2007

OJ C 223, 22.9.2007

These texts are available on:
EUR-Lex: http://eur-lex.europa.eu

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 22 November 2007 — Kingdom of Spain v Commission of the European Communities

(Case C-525/04 P) ([1])

(Appeal — State aid — Non-recovery of contributions, default surcharges and interest owed — Admissibility — Private creditor test)

(2008/C 8/02)

Language of the case: German

Parties

Appellant: Kingdom of Spain (represented by: J.M. Rodríguez Cárcamo, Agent)

Other parties to the proceedings: Commission of the European Communities (represented by: V. Kreuschitz and J. Buendía Sierra, Agents, M. Núñez-Müller, Rechtsanwalt), Lenzing AG, (represented by: U. Soltész, Rechtsanwalt)

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber, Extended Composition) of 21 October 2004 in Case T-36/99 between Lenzing AG and the Commission in which the Court annulled Article 1(1) of Commission Decision 1999/395/EC of 28 October 1998 on State aid implemented by Spain in favour of Sniace SA, located in Torrelavega, Cantabria (OJ 1999 L 149, p. 40), as amended by Commission Decision 2001/43/EC of 20 September 2000 (OJ 2001 L 11, p. 46) — Admissibility of an action for annulment brought by a competitor of the undertaking benefiting from the aid — Definition of a person individually concerned by the contested decision — Agreements on the rescheduling and repayment of debts — Private creditor test

Operative part of the judgment

The Court:

1) *Dismisses the appeal;*

2) *Orders the Kingdom of Spain to pay its own costs and those incurred by Lenzing AG;*

3) *Orders the Commission of the European Communities to bear its own costs.*

([1]) OJ C 69, 19.3.2005.

Judgment of the Court (First Chamber) of 22 November 2007 — Sniace SA v Commission of the European Communities — Republic of Austria, Lenzing Fibers GmbH, Land Burgenland

(Case C-260/05 P) ([1])

(Appeal — State aid — Admissibility — Measure of individual concern to the applicant)

(2008/C 8/03)

Language of the case: Spanish

Parties

Appellant: Sniace SA (represented by: J. Baró Fuentes, abogado)

Other parties to the proceedings: Commission of the European Communities (represented by: V. Kreuschitz and J.L. Buendía Sierra, Agents), Republic of Austria (represented by: H. Dossi, Agent), Lenzing Fibers GmbH (formerly Lenzing Lyocell GmbH & Co. KG) (represented by U. Soltész, Rechtsanwalt), Land Burgenland (represented by U. Soltész, Rechtsanwalt)

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber (Extended Composition)) of 14 April 2005 in Case T-88/01 Sniace SA v Commission declaring inadmissible the appellant's action for annulment of Commission Decision 2001/102/EC of 19 July 2000 on State aid granted by Austria to Lenzing Lyocell GmbH & Co. KG (OJ 2001 L 38, p. 33)

Operative part of the judgment

1. *Dismisses the appeal;*

2. *Orders Sniace SA to pay the costs;*

3. *Orders the Republic of Austria to bear its own costs.*

([1]) OJ C 193, 6.8.2005.

Judgment of the Court (First Chamber) of 15 November 2007 — Commission of the European Communities v Federal Republic of Germany

(Case C-319/05) ([1])

(Failure of a Member State to fulfil obligations — Articles 28 and 30 EC — Directive 2001/83/EC — Garlic preparation in capsule form — Preparation legally marketed as a food supplement in a number of Member States — Preparation classified as a medicinal product in the Member State of importation — Definition of 'medicinal product' — Obstacle — Jurisdiction — Public health — Proportionality)

(2008/C 8/04)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: B. Stromsky and B. Schima, Agents)

Defendant: Federal Republic of Germany (represented by: M. Lumma and C. Schulze-Bahr, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 28 and 30 EC — National administrative practice classifying a garlic preparation in capsule form as a medicinal product — Concept of medicinal product under Community rules

Operative part of the judgment

1) *By classifying as a medicinal product a garlic preparation in capsule form not satisfying the definition of a medicinal product within the meaning of Article 1(2) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, the Federal Republic of Germany has failed to fulfil its obligations under Article 28 EC and Article 30 EC;*

2) *The Federal Republic of Germany is ordered to pay the costs.*

([1]) OJ C 257, 15.10.2005.

Judgment of the Court (First Chamber) of 15 November 2007 (reference for a preliminary ruling from the Hovrätten för Övre Norrland (Sweden)) — Criminal proceedings against Fredrik Granberg

(Case C-330/05) ([1])

(Excise duties — Mineral oils — Atypical transport)

(2008/C 8/05)

Language of the case: Swedish

Referring court

Hovrätten för Övre Norrland

Party in the main proceedings

Fredrik Granberg

Re:

Reference for a preliminary ruling — Hovrätten för Övre Norrland — Interpretation of Article 9(3) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) — Import by private individuals of mineral oils already released for consumption in another Member State — Atypical means of transport

Operative part of the judgment

The Court rules:

1. *Article 9(3) of the Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, as amended by Council Directive 92/108/EEC of 14 December 1992, does not allow Member States generally to impose excise duty in the Member State of consumption on heating oil acquired in another Member State by a private individual for own use and transported by him to the Member State of consumption, irrespective of the means of transport used.*

2. *The transport by a private individual of 3 000 litres of heating oil in three 'intermediate bulk containers' on board a van constitutes an atypical mode of transport within the meaning of Article 9(3) of Directive 92/12, as amended by Directive 92/108.*

3. *Article 7(4) of Directive 92/12, as amended by Directive 92/108, does not preclude the legislation of a Member State of destination in which excise duty is chargeable, as allowed under Article 9(3) of that directive, from imposing on any private individual who has personally acquired, for his own use, heating oil in another Member State where it has been made available for consumption, and transported the product himself to the Member State of destination by means of an atypical mode of transport, within the meaning of Article 9(3), to have lodged a guarantee to ensure payment of the excise duties and to have an accompanying document as well as a document confirming lodgement of the guarantee of payment of the excise duties.*

([1]) OJ C 271, 29.10.2005.

Judgment of the Court (First Chamber) of 15 November 2007 (reference for a preliminary ruling from the Tribunal Supremo (Spain)) — International Mail Spain SL v Administración del Estado, Correos

(Case C-162/06) ([1])

(Directive 97/67/EC — Common rules for the development of the internal market in postal services — Liberalisation of postal services — Possibility to reserve cross-border post to the universal postal service provider 'to the extent necessary to ensure the maintenance of universal service')

(2008/C 8/06)

Language of the case: Spanish

Referring court

Tribunal Supremo (Spain)

Parties to the main proceedings

Appellant: International Mail Spain SL

Respondents: Administración del Estado, Correos

Re:

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Article 7(2) of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, prior to its amendment by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 (OJ 1998 L 15, p. 14) — Postal services reserved to universal service providers — Cross-border mail — Assessment criteria — Account taken solely of the effect on the financial equilibrium of the universal service provider

Operative part of the judgment

Article 7(2) of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service must be interpreted as allowing Member States to reserve cross-border mail to the universal postal service provider only in so far as they establish

— *that, in the absence of such a reservation, achievement of that universal service would be precluded, or*

— *that that reservation is necessary to enable that service to be carried out under economically acceptable conditions.*

([1]) OJ C 143, 17.6.2006.

Judgment of the Court (Fifth Chamber) of 15 November 2007 — Commission of the European Communities v Kingdom of Spain

(Case C-59/07) ([1])

(Failure of a Member State to fulfil obligations — Directive 2003/109/EC — Status of third-country nationals who are long-term residents — Failure to transpose within the prescribed period)

(2008/C 8/07)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: M. Condou-Durande and A. Alcover San Pedro, Agents)

Defendant: Kingdom of Spain (represented by: F. Díez Moreno, Agent)

Re:

Failure of the Member State to fulfil obligations — Failure to adopt, within the prescribed period, the provisions necessary to comply with Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, the Kingdom of Spain has failed to fulfil its obligations under that directive;*

2. *Orders the Kingdom of Spain to pay the costs.*

([1]) OJ C 69, 24.3.2007.

Reference for a preliminary ruling from the Raad van State (Netherlands) lodged on 17 October 2007 — M. and N. Elgafaji v Staatssecretaris van Justitie

(Case C-465/07)

(2008/C 8/08)

Language of the case: Dutch

Referring court

Raad van State/Netherlands

Parties to the main proceedings

Appellants: M. Elgafaji, N. Elgafaji and Staatssecretaris van Justitie

Questions referred

1. Is Article 15(c) of Council Directive 2004/83/EC ([1]) on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted to be interpreted as offering protection only in a situation on which Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted in the case-law of the European Court of Human Rights, also has a bearing, or does Article 15(c), in comparison with Article 3 of the Convention, offer supplementary or other protection?

2. If Article 15(c) of the Directive, in comparison with Article 3 of the Convention, offers supplementary or other protection, what are the criteria in that case for determining whether a person who claims to be eligible for subsidiary protection status runs a real risk of serious and individual threat by reason of indiscriminate violence within the terms of Article 15(c) of the Directive, read in conjunction with Article 2(e) thereof?

([1]) OJ L 304, p. 12.

Reference for a preliminary ruling from the Landesarbeitsgericht Düsseldorf (Germany), lodged on 22 October 2007 — Dietmar Klarenberg v Ferrotron Technologies GmbH

(Case C-466/07)

(2008/C 8/09)

Language of the case: German

Referring court

Landesarbeitsgericht Düsseldorf

Parties to the main proceedings

Applicant: Dietmar Klarenberg

Defendant: Ferrotron Technologies GmbH

Question referred

Is a part of an undertaking or business only transferred to another employer within the meaning of Article 1(1)(a) and (b) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses ([1]), if the new employer operates the part of an undertaking or business as an organisationally autonomous part of an undertaking or business?

([1]) OJ L 82, 12.3.2001, p. 16.

Action brought on 22 October 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-469/07)

(2008/C 8/10)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: H. Kraemer, Agent)

Defendant: Grand Duchy of Luxembourg

Form of order sought

The Commission of the European Communities claims that the Court should:

— declare that, by failing to communicate the Community design courts to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 80(2) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs ([1]);

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The Grand Duchy of Luxembourg has not fulfilled the obligation laid down in Article 80(2) of Regulation (EC) No 6/2002, under which each Member State is to communicate to the Commission not later than 6 March 2005 a list of Community design courts, indicating their names and their territorial jurisdiction.

([1]) OJ 2002 L 3, p. 1.

Reference for a preliminary ruling from the Hof van beroep te Antwerpen (Belgium) lodged on 29 October 2007 — N.V. Gerlach & Co v Belgische Staat

(Case C-477/07)

(2008/C 8/11)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties to the main proceedings

Applicant: N.V. Gerlach & Co

Defendant: Belgische Staat

Questions referred

1. Is the entry in the accounts referred to in Article 221(1) of the Community Customs Code (established by Council Regulation (EEC) No 2913/92 of 12 October 1992 ([1]); hereinafter 'the customs code') the entry in the accounts referred to in Article 217 of the customs code, which consists in the amount of duty being entered by the customs authorities in the accounting records or on any other equivalent medium, and is that entry in the accounts to be distinguished from the inclusion of the amount of duty in the accounts for own resources as referred to in Article 6 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources ([2]) (now Article 6 of Council Regulation 1150/2000 (EC, Euratom) of 22 May 2000 implementing Decision 2000/597/EC, Euratom on the system of the Communities' own resources ([3]))?

2. Is Article 221(1) of the customs code to be understood to mean that notification of the amount of duty by the customs authorities to the debtor in accordance with appropriate procedures can be regarded as the communication of the amount of duty to the debtor as referred to in Article 221(1) of the customs code only if the amount of duty has previously been entered in the accounts by the customs authorities?

3. Is Article 221(1) of the customs code to be understood to mean that, if the debtor is notified of the amount of duty by the customs authorities in accordance with appropriate procedures but without the amount of duty being entered in the accounts prior to the customs authorities' notification, payment of the amount of duty cannot be demanded, as a consequence of which, in order to obtain payment of the amount of duty, the customs authorities must again notify the debtor of the amount of duty in accordance with appropriate procedures after the amount of duty has been entered in the accounts and provided that the entry in the accounts occurs within the applicable limitation period?

([1]) Regulation establishing the Community Customs Code OJ 1992 L 302, p. 1.
([2]) OJ 1989 L 155, p. 1.
([3]) OJ 2000 L 130, p. 1.

Reference for a preliminary ruling from the Rechtbank 's-Gravenhage (Netherlands) lodged on 2 November 2007 — AHP Manufacturing BV v Bureau voor de Industriële Eigendom, also operating under the name Octrooicentrum Nederland

(Case C-482/07)

(2008/C 8/12)

Language of the case: Dutch

Referring court

Rechtbank 's-Gravenhage

Parties to the main proceedings

Applicant: AHP Manufacturing BV

Defendant: Bureau voor de Industriële Eigendom (Industrial Property Office), also operating under the name Octrooicentrum Nederland (Netherlands Patent Centre)

Questions referred

1. Does Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products ([1]), as subsequently amended, and more specifically Article 3(1)(c) thereof, preclude the grant of a certificate to the holder of a basic patent for a product for which, at the time of the submission of the application for a certificate, one or more certificates have already been granted to one or more holders of one or more other basic patents?

2. Does Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products ([2]), as subsequently amended, and more specifically recital 17 and the second sentence of Article 3(2) thereof, give rise to a different answer to Question 1?

3. When answering the previous questions, is it relevant whether the last application submitted, like the previous application or applications, is submitted within the period prescribed by Article 7(1) of Regulation (EEC) No 1768/92 or that prescribed by Article 7(2) of Regulation (EEC) No 1768/92?

4. When answering the previous questions, is it relevant whether the period of protection afforded by the grant of a certificate pursuant to Article 13 of Regulation (EEC) No 1768/92 expires at the same time as, or at a later time than, under one or more certificates already granted for the product concerned?

5. When answering the previous questions, is it relevant that Regulation (EEC) No 1768/92 does not specify the period within which the competent authority, as referred to in Article 9(1) of that Regulation, must process the application for a certificate and ultimately grant a certificate, as a result of which a difference in the speed with which the authorities concerned in the Member States process applications may lead to differences between them as to the possibility of a certificate being granted?

([1]) OJ 1992 L 182, p. 1.
([2]) OJ 1996 L 198, p. 30.

Appeal brought on 5 November 2007 by Galileo Lebensmittel GmbH & Co KG against the order of the Court of First Instance (Second Chamber) delivered on 28 August 2007 in Case T-46/06 Galileo Lebensmittel GmbH & Co KG v Commission of the European Communities

(Case C-483/07 P)

(2008/C 8/13)

Language of the case: German

Parties

Appellant: Galileo Lebensmittel GmbH & Co KG (represented by: K. Bott, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

1. Set aside the order of the Second Chamber of the Court of First Instance of the European Communities of 28 August 2007 and

2. Annul the respondent's decision to reserve the Domain galileo.eu;

3. Order the respondent to pay the costs of the appeal proceedings and of the proceedings before the Court of First Instance;

4. Only in the alternative to the orders sought under points 2 and 3 above, refer the case back to the Court of First Instance and order the respondent to pay the costs of the appeal proceedings.

Pleas in law and main arguments

The appellant contends in this appeal that there has been an infringement of Community law (second sentence of Article 58(1) of the Court Statute), namely the fourth paragraph of Article 230 EC. According to the appellant, the Court of First Instance committed such a legal infringement by dismissing its action as inadmissible on the basis that the appellant was not 'individually concerned' by the contested decision of the respondent to reserve the domain galileo.eu for itself. The appellant regards itself as individually concerned within the meaning of the case-law of the Court of Justice by the decision of the Commission to reserve the Domain galileo.eu for itself, on the ground of its rights in respect of the German word mark Galileo, on the ground of its legal standing in the registration procedure conferred on it by Commission Regulation 874/2004 and on the basis that the Domain galileo.eu is a marketable economic asset and can only be allocated once.

Reference for a preliminary ruling from the Rechtbank 's-Gravenhage, sitting at Roermond (Netherlands) lodged on 31 October 2007 — Fatma Pehlivan v Staatssecretaris van Justitie

(Case C-484/07)

(2008/C 8/14)

Language of the case: Dutch

Referring court

Rechtbank 's-Gravenhage, sitting at Roermond (Netherlands)

Parties to the main proceedings

Applicant: Fatma Pehlivan

Defendant: Staatssecretaris van Justitie

Questions referred

1a. Must the first indent of the first paragraph of Article 7 of Association Decision 1/80 be interpreted as meaning that that article is applicable if a family member has actually cohabited with a Turkish worker for three years without the right of residence of that family member being challenged by the competent national authorities during those three years?

1b. Does the first indent of the first paragraph of Article 7 of Association Decision 1/80 prevent a Member State from stipulating during those three years that, if the family member who has been admitted marries, no rights are further acquired under that provision, even if the family member continues to live with the Turkish worker?

2. Does the first indent of the first paragraph of Article 7 or any other provision or principle of European law prevent the competent national authorities from challenging the right of residence of the foreign national concerned with retroactive effect after that period of three years under national rules determining whether that person is a family member and/or was legally resident during those three years?

3a. Is it of any relevance to the answers to the above questions whether or not the foreign national intentionally withholds information which is relevant to his right of residence under national legislation? If so, in what way?

3b. Does it make any difference in this context whether that information becomes known in the aforementioned period of three years or only after those three years have elapsed, bearing in mind that, after that information has become known, the competent national authorities possibly need to undertake (further) investigations before reaching their decision? If so, in what way?

Reference for a preliminary ruling from Court of Appeal (Civil Division) (United Kingdom) made on 5 November 2007 — L'Oréal SA, Lancôme parfums et beauté & Cie SNC, Laboratoire Garnier & Cie v Bellure NV, Malaika Investments Ltd, (trading as 'Honey pot cosmetic & Perfumery Sales'), Starion International Ltd

(Case C-487/07)

(2008/C 8/15)

Language of the case: English

Referring court

Court of Appeal (Civil Division)

Parties to the main proceedings

Applicants: L'Oréal SA, Lancôme parfums et beauté & Cie SNC, Laboratoire Garnier & Cie

Defendant: Bellure NV, Malaika Investments Ltd, trading as 'Honey pot cosmetic & Perfumery Sales'), Starion International Ltd

Questions referred

1 Where a trader, in an advertisement for his own goods or services uses a registered trade mark owned by a competitor for the purpose of comparing the characteristics (and in particular the smell) of goods marketed by him with the characteristics (and in particular the smell) of the goods marketed by the competitor under that mark in such a way that it does not cause confusion or otherwise jeopardise the essential function of the trade mark as an indication of origin, does his use fall within either (a) or (h) of Article 5(I) of Directive 89/104?

2 Where a trader in the course of trade uses (particularly in a comparison list) a well known registered trade mark for the purpose of indicating a characteristic of his own product (particularly its smell) in such a way that:

a) it does not cause any likelihood of confusion of any sort; and

b) it does not affect the sale of the products under the well-known registered mark: and

c) it does not jeopardize the essential function of the registered trade mark as a guarantee of origin and does not harm the reputation of that mark whether by tarnishment of its image, or dilution or in any other way; and

d) it plays a significant role in the promotion of the trader's product

does that use fall within Article 5(1)(a) of Directive 89/104?

3 In the context of Article 3a(g) of the Misleading Advertising Directive (84/450) as amended by the Comparative Advertising Directive (97/55), what is the meaning of 'take unfair advantage of' and in particular where a trader in a comparison list compares his product with a product under a well-known trade mark, does he thereby take unfair advantage of the reputation of the well-known mark'?

4 In the context of Article 3a(h) of the said Directive what is the meaning of 'presenting goods or services as imitations or replicas' and in particular does this expression cover the case where, without in any way causing confusion or deception, a party merely truthfully says that his product has a major characteristic (smell) like that of a well-known product which is protected by a trade mark?

5 Where a trader uses a sign which is similar to a registered trade mark which has a reputation, and that sign is not confusingly similar to the trade mark, in such a way that

(a) the essential function of the registered trade mark of providing a guarantee of origin is not impaired or put at risk;

(b) there is no tarnishing or blurring of the registered trade mark or its reputation or any risk of either of these;

(c) the trade mark owner's sales are not impaired: and

(d) the trade mark owner is not deprived of any of the reward for promotion, maintenance or enhancement of his trade mark;

(e) But the trader gets a commercial advantage from the use of his sign by reason of its similarity to the registered mark

does that use amount to the taking of 'an unfair advantage' of the reputation of the registered mark within the meaning of Article 5(2) of the Trade Mark Directive?

Reference for a preliminary ruling from Court of Session (Scotland), Edinburgh (United Kingdom) made on 5 November 2007 — Royal Bank of Scotland plc v The Commissioners of Her Majesty's Revenue & Customs

(Case C-488/07)

(2008/C 8/16)

Language of the case: English

Referring court

Court of Session (Scotland), Edinburgh

Parties to the main proceedings

Applicant: Royal Bank of Scotland plc

Defendan: The Commissioners of Her Majesty's Revenue & Customs

Questions referred

1. Does the second paragraph of Article 19(1) of the Sixth VAT Directive 77/388/EEC [1] require the proportion deductible by a taxable person under Article 17(5) to be determined on an annual basis, fixed as a percentage and rounded up to a figure not exceeding the next unit where:

   a. that proportion is a proportion which has been determined for a sector of the business of the taxable person in accordance with either item (a) or (b) of the third subparagraph of Article 17(5); and/or

   b. that proportion is a proportion which has been determined on the basis of the use of all or part of goods and services by the taxable person in accordance with item (c) of the third subparagraph of Article 17(5); and/or

   c. that proportion is a proportion which has been determined in respect of all goods and services used by the taxable person for all transactions referred to in the first paragraph of Article 17(5), in accordance with item (d) of the third subparagraph thereof?

2. Does the second subparagraph of the said Article 19(1) permit Member States to require the proportion deductible by a taxable person under Article 17(5) to be rounded up to a figure other than the next highest whole number?

[1] OJ L 145 p. 1.

Action brought on 12 November 2007 — Commission of the European Communities v Hellenic Republic

(Case C-494/07)

(2008/C 8/17)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia and D. Recchia)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to

— declare, that, by failing to take the measures necessary to implement correctly its obligations under Articles 6(4), 12 and 13 (in conjunction with Annex IV) of Council Directive 92/43/EEC ([1]) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, the Hellenic Republic has failed to fulfil its obligations under those provisions;

— order the Hellenic Republic to pay the costs.

Pleas in law and main argument

The Commission has examined the compatibility of the measures taken by the Hellenic Republic to transpose Directive 92/43/EEC.

Its review showed that certain provisions of the directive have not been fully implemented and/or have not been transposed correctly.

In particular, the Commission considers that the use of the phrase 'reasons of essential public interest' in the Greek legislation instead of the phrase 'imperative reasons of overriding public interest' referred to in Article 6(4) of the directive, is an incorrect transposition of the provision in question, because it widens the possibility of use of the derogation provided for and is not compatible with the need to interpret it narrowly.

The Commission also considers that the addition, in the Greek legislation, of the words 'of particular economic significance' to the phrase 'imperative reasons of overriding public interest' contained in Article 6(4) of the directive, bringing into operation the exception provided for in that provision, constitutes an incorrect transposition of Article 6(4) of the directive, because it adds further possibilities of derogation.

Lastly, the Commission ascertained that, as the Greek authorities acknowledge, the provisions of the Greek legislation transposing Articles 12 and 13 do not refer to the Annex which specifies their scope of application, so that the above articles of the directive have not been correctly transposed.

The Commission therefore considers that the Hellenic Republic has not correctly implemented Articles 6(4), 12 and 13 of the Directive on the conservation of natural habitats and of wild fauna and flora.

([1]) OJ L 206 of 22.7.1992.

Action brought on 20 November 2007 — Commission of the European Communities v French Republic

(Case C-507/07)

(2008/C 8/18)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: H. Kraemer, Agent)

Defendant: French Republic

Form of order sought

The Commission of the European Communities claims that the Court should:

— declare that, by failing to communicate the Community design courts to the Commission, the French Republic has failed to fulfil its obligations under Article 80(2) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs ([1]);

— order French Republic to pay the costs.

Pleas in law and main arguments

The French Republic has not fulfilled the obligation laid down in Article 80(2) of Regulation (EC) No 6/2002, under which each Member State is to communicate to the Commission not later than 6 March 2005 a list of Community design courts, indicating their names and their territorial jurisdiction.

([1]) OJ 2002 L 3, p. 1.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 27 November 2007 — Pitsiorlas v Council and ECB

(Joined Cases T-3/00 and T-337/04) ([1])

(Access to documents — Basle/Nyborg Agreement — Action for annulment — Challengeable acts — Statement of reasons — Plea of illegality — Decision 93/731/EC — Rules of Procedure of the European Central Bank — Action for damages — Non-contractual liability of the Community for the unlawful conduct of its organs — Damage — Causal link)

(2008/C 8/19)

Language of the case: Greek

Parties

Applicant: Athanasios Pitsiorlas (Thessaloniki, Greece) (represented by: D. Papafilippou, lawyer)

Defendants: Council of the European Union (represented initially by M. Bauer, S. Kyriakopoulou and D. Zachariou, and subsequently by M. Bauer and D. Zachariou, acting as Agents), and European Central Bank (represented, in Case T-3/00, initially by C. Zilioli, C. Kroppenstedt and P. Vospernik, and subsequently by C. Zilioli, C. Kroppenstedt, F. Athanasiou and S. Vuorensola, and finally by C. Zilioli, C. Kroppenstedt and F. Athanasiou and, in Case T-337/04, by C. Kroppenstedt, F. Athanasiou and P. Papapaschalis, acting as Agents)

Re:

Application, first, for annulment of the decisions of the Council and the European Central Bank refusing the applicant access to documents relating to the Basle/Nyborg Agreement of September 1987 and, second, for damages

Operative part of the judgment

The Court:

1. *Annuls the decision of the Governing Council of 21 October 1999, as brought to the knowledge of Mr Athanasios Pitsiorlas by letter of the European Central Bank (ECB) of 8 November 1999;*

2. *Dismisses the action for annulment as to the remainder;*

3. *Dismisses the action for damages;*

4. *Orders the Council, the ECB and the applicant each to bear their own costs as incurred in Joined Cases T-3/00 and T-337/04. The Council shall bear the costs that it incurred in Case C-193/01 P, together with those incurred in that case by the applicant.*

([1]) OJ C 122, 29.4.2000.

Judgment of the Court of First Instance of 20 November 2007 — Ianniello v Commission

(Case T-205/04) ([1])

(Civil service — Officials — Career evaluation report — 2001/2002 evaluation period — Action for annulment — Action for damages)

(2008/C 8/20)

Language of the case: French

Parties

Applicant: Alessandro Ianniello (Brussels, Belgium) (represented by: S. Rodrigues and Y. Minatchy, lawyers)

Defendant: Commission of the European Communities (represented by: J. Currall, Agent, assisted by D. Waelbroeck, lawyer)

Re:

On the one hand, annulment of the applicant's career evaluation report for the 2001/2002 evaluation period and the decision of the Appointing Authority of 18 February 2004 rejecting his complaint and, on the other, payment of compensation for the non-material suffered.

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders each party to bear their own costs.*

([1]) OJ C 217 of 28.8.2004.

Judgment of the Court of First Instance of 20 November 2007 — Ianniello v Commission

(Case T-308/04) ([1])

(Civil service — Officials — Career evaluation report — 2001/2002 evaluation period — Action for annulment — Action for damages)

(2008/C 8/21)

Language of the case: French

Parties

Applicant: Francesco Ianniello (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: Commission of the European Communities (represented by: G. Berscheid and V. Joris, Agents)

Re:

Annulment of the applicant's career evaluation report for the 2001/2002 evaluation period and payment of compensation for the non-material suffered.

Operative part of the judgment

The Court:

1. *Annuls the decision adopting the applicant's career evaluation report for the 2001/2002 evaluation period;*

2. *Dismisses the remainder of the application;*

3. *Orders the Commission to bear its own costs and to pay those of the applicant.*

([1]) OJ C 262 of 23.10 2004.

Judgment of the Court of First Instance of 20 November 2007 — P v Commission

(Case T-103/05) ([1])

(Civil service — Remuneration — Improper absence — Loss of the benefit of remuneration — Article 59 of the Staff Regulations — Medical certificate)

(2008/C 8/22)

Language of the case: Spanish

Parties

Applicant: P (Barcelona, Spain) (represented by: M. Griful i Ponsati, lawyer)

Defendant: Commission of the European Communities (represented initially by J. Currall and L. Lozano Palacios, and later by J. Currall and I. Martínez del Peral, Agents)

Re:

Annulment of the Commission's decision of 10 May 2004 declaring the applicant's absence improper from 16 March 2004 and suspending payment her salary from 15 April 2004 until the date on which she commenced performing her duties at the DG Press and Communication in Brussels.

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders the parties to bear their own costs.*

([1]) OJ C 132 of 28.5.2005.

Judgment of the Court of First Instance of 28 November 2007 — Vounakis v Commission

(Case T-214/05) ([1])

(Staff cases — Officials — Career Development Report — 2003 Evaluation exercise — Definition of goals to achieve — Duty to state reasons — Inconsistency between points and comments — Manifest error of assessment)

(2008/C 8/23)

Language of the case: French

Parties

Applicant: Hippocrate Vounakis (Wezembeek-Oppem, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: Commission of the European Communities (represented by: G. Berscheid and V. Joris, Agents)

Re:

Application for annulment of the Commission decision of 13 July 2004 adopting the applicant's definitive career development report for the period from 1 January to 31 December 2003

Operative part of the judgment

The Court:

1. *annuls the decision of 13 July 2004 adopting the career development report in respect of Mr Hippocrate Vounakis for the period from 1 January until 31 December 2003 as far as concerns the heading 'Productivity';*

2. *dismisses the remainder of the action;*

3. *orders the Commission to pay the costs.*

([1]) OJ C 205, 20.8.2005.

Judgment of the Court of First Instance of 27 November 2007 — GATEWAY v OHIM — Fujitsu Siemens Computers (ACTIVY Media Gateway)

(Case T-434/05) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark ACTIVY Media Gateway — Earlier Community and national word and figurative marks Gateway and GATEWAY — Relative grounds for refusal — No likelihood of confusion — Absence of similarity between the signs — Article 8(1)(b) of Regulation (EC) No 40/94 — Article 8(5) of Regulation No 40/94)

(2008/C 8/24)

Language of the case: English

Parties

Applicant: Gateway, Inc. (Irvine, California, United States) (represented initially by: C.R. Jones and P. Massey, and subsequently by C.R. Jones and E.S. Mackenzie, solicitors)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Laporta Insa, Agent)

Other party to the proceedings before the Board of Appeal of OHIM: Fujitsu Siemens Computers GmbH (Munich, Germany)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 14 September 2005 (Case R 1068/2004-1), relating to opposition proceedings between Fujitsu Siemens Computers GmbH and Gateway, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Gateway, Inc., to bear its own costs and to pay those of the Office for Harmonisation in the Internal Market (Trade Marks and Designs).*

([1]) OJ C 60, 11.3.2006.

Judgment of the Court of First Instance of 20 November 2007 — Tegometall International v OHIM — Wuppermann (TEK)

(Case T-458/05) ([1])

(Community trade mark — Invalidity proceedings — Application for the Community word mark TEK — Subject-matter of the proceedings — Observance of the rights of the defence — Absolute grounds for refusal — Descriptive character — Article 7(1)(b),(c) and (g) and Article 51(1)(a) of Regulation (EC) No 40/94)

(2008/C 8/25)

Language of the case: German

Parties

Applicant: Tegometall International AG (Lengwil-Oberhofen, Switzerland) (represented by: H. Timmann, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Weberndörfer, Agent)

Other party to the proceedings before the Board of Appeal of OHIM intervener before the Court of First Instance: Wuppermann AG (Leverkusen, Germany) (represented: initially by H. Huisken, and subsequently by I. Friedhoff, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 21 October 2005 (Case R 1063/2004-2), as rectified on 16 November 2005, relating to invalidity proceedings between Wuppermann AG and Tegometall International AG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant to pay the costs, except those incurred by the intervener;*

3. *Orders the intervener to bear its own costs.*

([1]) OJ C 60, 11.3.2006.

Judgment of the Court of First Instance of 21 November 2007 — Wesergold Getränkeindustrie v OHIM — Lidl Stiftung (VITAL FIT)

(Case T-111/06) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark VITAL FIT — Earlier national word mark VITAFIT — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 — Right to a fair hearing — Obligation to state reasons)

(2008/C 8/26)

Language of the case: German

Parties

Applicant: Wesergold Getränkeindustrie GmbH & Co. KG (Rinteln, Germany) (represented by: P. Goldenbaum, T. Melchert and I. Rohr, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance: Lidl Stiftung & Co. KG (Neckarsulm, Germany) (represented by: M. Schaeffer, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 16 February 2006 in Case R 3/2005-2 relating to opposition proceedings between Lidl Stiftung & Co. KG and Wesergold Getränkeindustrie GmbH & Co. KG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Wesergold Getränkeindustrie GmbH & Co. KG to pay the costs.*

([1]) OJ C 143, 17.6.2006.

Judgment of the Court of First Instance of 20 November 2007 — Castellani v OHIM — Markant Handels und Service (CASTELLANI)

(Case T-149/06) ([1])

(Community trade mark — Opposition proceedings — Application for the figurative Community trade mark CASTELLANI — Earlier national word marks CASTELLUM and CASTELLUCA — Relative ground of refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

(2008/C 8/27)

Language of the case: English

Parties

Applicant: Castellani SpA (Campagna Gello, Italy) (represented by: A. Di Maso and M. Di Maso, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. García Murillo, agent)

The other party to the proceedings before the Board of Appeal of OHIM: Markant Handels und Service GmbH (Offenburg, Germany)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 22 February 2006 (Case R 449/2005-1), relating to opposition proceedings between Markant Handels und Service GmbH and Castellani SpA.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 22 February 2006 (Case R 449/2005 1);*

2. *Orders OHIM to pay the costs.*

([1]) OJ C 178, 29.7.2006.

Order of the Court of First Instance of 22 November 2007 — Investire Partecipazioni v Commission

(Case T-418/05) ([1])

(Action for annulment — ERDF — Measure that cannot be the subject of an action — Preparatory measure — Inadmissibility)

(2008/C 8/28)

Language of the case: Italian

Parties

Applicant: Investire Partecipazioni SpA (Rome, Italy) (represented by: G.M. Roberti and A. Franchi, Lawyers)

Defendant: Commission of the European Communities (represented by: L. Flynn and M. Velardo, Agents, assisted by G. Faedo, Lawyer)

Re:

Application for annulment of decisions allegedly contained in two letters from the Commission's Directorate General for Regional Policy of 11 and 23 August 2005, addressed to the Permanent Representation of the Italian Republic to the European Union, concerning the ineligibility, for assistance from the European Regional Development Fund, of a measure provided for in the Objective 2 Single Programming Document for the period 1997-1999 concerning the Region of Piedmont (Italy).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Investire Partecipazioni SpA shall pay the costs.*

([1]) OJ C 22, 28.1.2006.

Order of the Court of First Instance of 22 November 2007 — Investire Partecipazioni v Commission

(Case T-102/06) ([1])

(Action for annulment — ERDF — Reduction of financial assistance — Lack of direct concern — Inadmissibility)

(2008/C 8/29)

Language of the case: Italian

Parties

Applicant: Investire Partecipazioni SpA (Rome, Italy) (represented by: G.M. Roberti and A. Franchi, Lawyers)

Defendant: Commission of the European Communities (represented by: M. Velardo and L. Flynn, Agents, assisted by G. Faedo, Lawyer)

Re:

Application for annulment of Commission Decision C(2005) 4683 of 25 November 2005, concerning a reduction of the assistance granted by the European Regional Development Fund (ERDF) pursuant to Decision C(97) 2199, of 27 July 1997, approving assistance from the ERDF for measures provided for in the Objective 2 Single Programming Document for the period 1997-1999 concerning the region of Piedmont (Italy).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Investire Partecipazioni is ordered to pay the costs.*

([1]) OJ C 121, 20.5.2006.

Order of the President of the Court of First Instance of 9 November 2007 — Poland v Commission

(Case T-183/07 R) ([1])

(Application for interim measures — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — National allocation plan for greenhouse gas emission allowances for Poland for the period from 2008 to 2012 — Commission decision rejecting that plan — Application for suspension of operation — Lack of urgency)

(2008/C 8/30)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: T. Nowakowski, acting as Agent)

Defendant: Commission of the European Communities (represented by: U. Wölker and K. Herrmann, acting as Agents)

Re:

Application to suspend the operation of Commission Decision C(2007) 1295 final of 26 March 2007, concerning the national allocation plan for greenhouse gas emission allowances notified by the Republic of Poland for the period from 2008 to 2012, in accordance with Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003, establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *Costs are reserved.*

([1]) OJ C 155, 7.7.2007.

Order of 15 November 2007 of the Judge hearing the application for interim measures — Donnici v Parliament

(Case T-215/07 R)

(Application for interim measures — Decision of the European Parliament — Verification of the credentials of elected members — Invalidation of a parliamentary mandate resulting from the application of national electoral law — Application for a suspension of operation — Admissibility — Prima facie case — Urgency — Balancing of interests)

(2008/C 8/31)

Language of the case: Italian

Parties

Applicant: Beniamino Donnici (Castrolibero, Italy) (represented by: M. Sanino, G.M. Roberti, I. Perego and P. Salvatore, lawyers)

Defendant: European Parliament (represented by: H. Krück, N. Lorenz and A. Caiola, Agents)

Intervener in support of the applicant: Italian Republic (represented by: I. Braguglia, Agent, and P. Gentili, lawyer)

Intervener in support of the defendant: Achille Occhetto (Rome, Italy) (represented by: P. De Caterini and F. Paola, lawyers)

Re:

Application for a suspension of the operation of the decision of the European Parliament of 24 May 2007 on the verification of the credentials of Beniamino Donnici [2007/2121(REG)] until the Court has ruled on the action in the main proceedings.

Operative part of the order

1. *The operation of the decision of the European Parliament of 24 May 2007 on the verification of the credentials of Beniamino Donnici [2007/2121(REG)] is suspended.*

2. *Costs are reserved.*

Action brought on 31 October 2007 — Kingdom of Spain v Commission of the European Communities

(Case T-398/07)

(2008/C 8/32)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: N. Díaz Abad, Agent)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission Decision of 4 July 2007 relating to a proceeding under Article 82 EC (Case COMP/38.784 — Wanadoo España v Telefónica) and

— Order the defendant to pay the costs

Pleas in law and main arguments

The present action is brought against the decision of 4 July 2006 relating to a proceeding under Article 82 EC (Case COMP/38.784 — Wanadoo España v Telefónica) in which the Commission imposed a fine of EUR 151 875 000 on Telefónica, S.A. and jointly and severally on Telefónica de España S.A. U., for an infringement of Article 82 EC. According to the Commission, from September 2001 until December 2006 both companies charged unfair tariffs in the form of disproportion between their wholesale and retail broadband access prices.

In support of its claims, the applicant puts forward the following grounds:

— Breach of the duty to cooperate laid down in Article 10 EC and in Article 7(2) of Directive 2002/21/EC [1] in so far as the Commission did not give the Spanish national regulatory authority the opportunity to collaborate with it, for the purposes of considering the means which might have enabled the alleged infringement to be resolved, in the most effective way possible.

— Infringement of Article 82 EC on account of manifest errors of assessment as regards the indispensability of the wholesale products, the calculation of costs and the effects of Telefónica's behaviour on competitors and consumers.

— *Ultra vires* application of Article 82 EC, since the contested decision impinges on the regulatory framework for current electronic communications in force in Spain, and thus upsets the balance between *ex ante* regulation and competition rules. Furthermore, inconsistency of the results obtained by the Commission with international experience and the reality of the Spanish market, impeding the Spanish national regulatory authority from attaining the objectives set out in that regulatory framework, and breach of the principle of specificity.

— Breach of the principle of legal certainty, since the contested decision implies an *ex post* change in the concept of the regulatory framework as defined *ex ante*.

— Breach of the principle of legitimate expectation with respect to Telefónica, and with respect to the rest of the operators in that market, by failing to comply with the regulatory framework in a matter that had already been regulated by the Commission for the Telecommunications Market.

[1] Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

Action brought on 2 November 2007 — Caixa Geral de Depósitos v Commission

(Case T-401/07)

(2008/C 8/33)

Language of the case: Portuguese

Parties

Applicant: Caixa Geral de Depósitos SA (Lisbon, Portugal) (represented by: Nuno Mimoso Ruiz, Francisca Ponce de Leão Paulouro and Carla Farinhas, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— declare that the action for annulment brought pursuant to Article 230 of the EC Treaty and, simultaneously and cumulatively, the action brought pursuant to Article 238 of the EC Treaty on the basis of the arbitration clause laid down in Article 18 of the agreement concluded on 15 November 1995 between the Commission and the CGD were brought in accordance with law;

— annul Article 1 of Decision C(2007) 3772 of 31 July 2007 in accordance with Article 230 of the EC Treaty;

— irrespective of whether the action brought pursuant to Article 230 of the EC Treaty is upheld or dismissed, uphold the action brought pursuant to Article 238 of the EC Treaty and the claim relating thereto and, consequently, order the Commission to pay the sum of EUR 1 925 858,61, plus default interest at the statutory rate of 7 %, calculated from the date on which [formal] notice was given, namely 7 March 2003, until 30 April 2003 in accordance with Portaria (Decree) No 263/99 of 12 April 1999, and at the statutory rate of 4 % from 1 May 2003 onwards until full repayment of the debt in accordance with Portaria No 291/03 of 8 April 2003;

— order the Commission of the European Communities to pay the costs of the proceedings and the costs incurred by the CGD.

Pleas in law and main arguments

Although, in theory, the State may refrain from requiring the CGD to repay the amount claimed by the Commission, the contested decision dismisses from the outset the possibility of the release of an amount owed by the Commission itself to the CGD.

Given that, in the contested decision, the Commission does not make a distinction between the legal position of the State and that of the applicant, it is in the CGD's interests that that decision be annulled since, although it is addressed to the Portuguese Republic, it concerns the CGD individually and directly. The contested decision is vitiated by the following procedural errors:

— Lack of reasoning: the contested decision does not contain any explanation of the way in which the Commission calculated the amount of the financial assistance paid in advance by the ERDF and which it considers should be returned to it. In addition, the statement of reasons is contradictory, contains omissions, inaccuracies and errors.

— Error of fact: the contested decision presupposes that the intermediary is to pay the beneficiaries interest subsidies on the loans forming part of the global grant, when that is not the case, those subsidies are to be deducted from the interest which the beneficiaries owe to the CGD.

— Error of law, infringement of the legal rules relating to the application of the EC Treaty and infringement of the agreement concluded between the Commission and the CGD: in the present case, the fact that, on 31 December 2001, the financial assistance granted by the ERDF corresponded to 82 % of the total amount of interest subsidies due is not contrary to Article 13(3) of Regulation (EEC) No 2052/88 [1]. It is true that Article 21(1) of Regulation (EEC) No 4253/88 [2] refers to advances or final payments in respect of 'expenditure actually incurred' but charges (not payments) also exist with interest subsidies which did not arise until after 31 December 2001. The debts corresponding to the flux of the residual ERDF subsidies (due for payment) of each loan may be certified by the Commission as ERDF expenses actually incurred and paid. Proof that expenses or charges have actually been incurred is not furnished by the advance payment of those subsidies to the final beneficiaries but by determining the obligations deriving — or 'to be assumed' — from binding loan contracts concluded and executed up until that date. There is no obligation whatsoever to anticipate the 'payment of the subsidies' which are due on 31 December 2001 or, in the alternative, to open a special account for the deposit of the national contribution.

— Infringement of the principles of proportionality, legal certainty and protection of legitimate expectations: in recitals 19 and 26 in the preamble to the contested decision the Commission justifies the alternative conditions for considering that expenses were actually incurred before 31 December 2001 in the light of the guidelines announced at a meeting of the CDCR (Committee on the Development and Conversion of Regions) held on 29 May 2002, those guidelines having been distributed in the CDCR after 31 December 2001. The applicant admits that those guidelines may contribute to ensuring the closing of the overall subsidies intended to subsidise interest payments and that the interest owed by the borrower is net of those subsidies. None the less, it is also necessary that the implementing decisions and the agreements reached have actually been designed in conformity with those solutions or are compatible with them, which is not the case with the SGAIA decision or the agreement in question. In the guidelines referred to above, the Commission admits that other methods exist for taking account of the expenses in question. One of those methods consists of the so-called 'assumption' of all the financing of the subsidies due after closure of the programme, which leads to the presumption that the legal guarantees are permissible. However, that 'assumption' actually takes place from the moment at which the CGD cannot require the beneficiaries to pay it more than the interest net of the subsidies. Thus, the contested decision ignores solutions which are more consistent with the SGAIA, easier to execute and less disadvantageous for the intermediary and for the beneficiaries and which are also capable of protecting the interests at stake. On the other hand, the Portuguese Republic and the CGD had legitimate expectations in relying on the subsidy in conditions which are different from those resulting from the guidelines referred to above since they were notified after the programme had been closed.

[1] Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9).

[2] Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).

Action brought on 6 November 2007 — Kaul v OHIM — Bayer (ARCOL)

(Case T-402/07)

(2008/C 8/34)

Language of the case: English

Parties

Applicant: Kaul GmbH (Elmshorn, Germany) (represented by: G. Würtenberger and R. Kunze, lawyers)

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

Other party to the proceedings before the Board of Appeal: Bayer AG (Leverkusen, Germany)

Form of order sought

— The decision of the Second Board of Appeal of 1 August 2007 in Case R 782/2000-2, pertaining to the opposition based on Community trade mark registration No 49 106 'CAPOL' against Community trade mark application No 195 370 'ARCOL', be annulled;

— the opposition against Community trade mark application No 195 370 'ARCOL', be granted;

— the defendant pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark: Bayer AG

Community trade mark concerned: The Community word mark 'ARCOL' for goods in Classes 1, 17 and 20 — application No 195 370

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

Mark or sign cited: The Community word mark 'CAPOL' for goods in classes 1

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Articles 8(1)(b), 63(6), 73, and 74 of Council Regulation (EC) No 40/94('the CTMR').

According to the applicant, the Board of Appeal failed to take into account the obligations laid down in Articles 63(6) and 73 of the CTMR by disregarding the guidance provided by the Court of Justice in Case C-29/05 P and by refusing to exercise any discretion under Article 74(2) of the CTMR. Furthermore, the applicant contends that the Board failed to state reasons on which it based its decision.

Action brought on 8 November 2007 — Union Nationale de l'Apiculture Française and Others v Commission

(Case T-403/07)

(2008/C 8/35)

Language of the case: French

Parties

Applicants: Union Nationale de l'Apiculture Française (Paris, France), Deutscher Berufs- und Erwerbsimkerbund eV (Soltau, Germany), Unione Nazionale Associazioni Apicoltori Italiani (Castel San Pietro Terme, Italy) and Asociación Galega de Apicultura (Santiago de Compostela, Spain) (represented by: B. Fau, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicants claim that the Court should:

— declare admissible the application for annulment of Commission Directive 2007/52/EC of 16 August 2007;

— annul Commission Directive 2007/52/EC of 16 August 2007;

— order the Commission to pay the costs.

Pleas in law and main arguments

By this action, the applicants are seeking the annulment of Commission Directive 2007/52/EC of 16 August 2007, amending Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant products on the market, to include ethoprophos, pirimiphos-methyl and fipronil as active substances ([1]).

In support of their action for annulment, the applicants are putting forward three pleas.

First of all, they submit that the contested directive was adopted in breach of the procedural rules which, the applicants claim, the Commission was required to comply with. In the applicants' submission, even if the Commission may have been authorised by the Council to adopt, by means of a directive, the implementing measures necessary to apply Directive 91/414/EEC, it does not have the authority to amend that latter directive, in particular with regard to the obligations on the Member States. The applicants submit that the contested directive is not a mere implementing directive but a directive amending Directive 91/414/EEC and, as such, should have been adopted pursuant to the procedure requiring prior consultation of the European Parliament. In the absence of such consultation, it is vitiated by a procedural defect.

In addition, the applicants allege that, under the cloak of amendments to the national authorisation procedures for the placing of plant products on the market, the contested directive in fact infringes the uniform rules of assessment laid down by the basic directive 91/414/EEC with regard to the inclusion of an active substance in Annex I thereto.

([1]) OJ L 214, p. 3.

Action brought on 8 November 2007 — Ryanair v Commission

(Case T-404/07)

(2008/C 8/36)

Language of the case: English

Parties

Applicant: Ryanair Ltd (Dublin, Ireland) (represented by: E. Vahida, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Declare in accordance with Article 232 EC that the Commission has failed to act pursuant to its obligations under the EC Treaty by not having defined a position with respect to the applicant's complaint lodged with the Commission on 8 May 2006 followed by a letter of formal notice of 31 July 2007;

— order the Commission to pay the entire costs, including the costs incurred by the applicant in the proceedings even if, following the bringing of the action, the Commission takes action which in the opinion of the Court removes the need to give a decision or if the Court dismisses the application as inadmissible; and

— take such further action as the Court may deem appropriate.

Pleas in law and main arguments

The applicant claims that the Commission has failed to act by not having defined its position, after having been invited to do so under Article 232 EC, on the applicant's complaint lodged with the Commission on 8 May 2006 regarding i) unlawful state aid allegedly granted to Air France by France in form of differentiated airport charges charged by the French airports depending on the destination of the flights, or ii) in the alternative, anti-competitive discrimination in violation of Article 82 EC in favour of Air France, should the French airports be considered to have acted autonomously.

In support of its application, the applicant submits that the Commission was under an obligation to conduct a diligent and impartial examination of the complaint received in order to:

— adopt a decision either declaring that the measures in question did not amount to state aid within the meaning of Article 87(1) EC, or declaring that the measures were to be considered state aid within the meaning of Article 87(1) EC, but compatible with the common market under Article 87(2) and (3) EC, or

— to initiate a procedure under Article 88(2) EC.

In the alternative, the applicant submits that the Commission was required, upon receipt of the applicant's subsidiary complaint that competition law had been infringed, either to initiate a procedure regarding the subject of the complaint or to adopt a definitive decision rejecting the complaint, after having given the applicant the opportunity to comment.

The applicant further alleges that under the circumstances and in view of the Commission's familiarity with the issues involved, the period of fourteen months between the applicant's complaint and its letter of formal notice was unreasonably long, and the inaction of the Commission during that period constitutes failure to act within the meaning of Article 232 EC.

Finally, the applicant contends that Article 232 EC entitles an undertaking to bring an action against the Commission's failure to adopt measures which would have been of direct and individual concern to it, and that the measures which the Commission failed to adopt in the present case were of direct and individual concern to the applicant as a competitor of Air France.

Action brought on 14 November 2007 — Caisse Fédérale du Crédit Mutuel Centre Est Europe v OHIM (P@YWEB CARD)

(Case T-405/07)

(2008/C 8/37)

Language in which the application was lodged: French

Parties

Applicant: Caisse Fédérale du Crédit Mutuel Centre Est Europe (Strasbourg, France) (represented by: P. Greffe and J. Schouman, lawyers)

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

Form of order sought

— Annulment of the decision of the First Board of Appeal of OHIM of 10 July 2007, notified on 14 September 2007, Case R 119/2007-1 refusing its application for registration of Community trade mark P@YWEB CARD, application No 3 861 044, for all the goods and services designated in classes 9, 36 and 38;

— Registration of Community trade mark application P@YWEB CARD No 3 861 044, for all the goods and services designated.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'P@YWEB CARD' for goods and services in classes 9, 36 and 38 (Application No 3 861 044)

Decision of the Examiner: Application for registration refused

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation No 40/94 ([1]) in that, according to the applicant and contrary to the findings in the contested decision, the term 'P@YWEB CARD' is not descriptive but, on the contrary, distinctive in relation to the goods and services designated.

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

Action brought on 14 November 2007 — Caisse Fédérale du Crédit Mutuel Centre Est Europe v OHIM (PAYWEB CARD)

(Case T-406/07)

(2008/C 8/38)

Language in which the application was lodged: French

Parties

Applicant: Caisse Fédérale du Crédit Mutuel Centre Est Europe (Strasbourg, France) (represented by: P. Greffe and J. Schouman, lawyers)

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

Form of order sought

— Annulment of the decision of the First Board of Appeal of OHIM of 12 September 2007, notified on 17 September 2007, Case R 120/2007-1 refusing its application for registration of Community trade mark PAYWEB CARD, application No 3 861 051, for all the goods and services designated in classes 9, 36 and 38;

— Registration of Community trade mark application PAYWEB CARD No 3 861 051, for all the goods and services designated.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'PAYWEB CARD' for goods and services in classes 9, 36 and 38 (Application No 3 861 051)

Decision of the Examiner: Application for registration refused

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation No 40/94 ([1]) in that, according to the applicant and contrary to the findings in the contested decision, the term 'PAYWEB CARD' is not descriptive but, on the contrary, distinctive in relation to the goods and services designated.

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

Action brought on 8 November 2007 — CMB and Christof v Commission and EAR

(Case T-407/07)

(2008/C 8/39)

Language of the case: English

Parties

Applicants: CMB Maschinenbau & Handels GmbH (Gratkorn, Austria) and J. Christof GmbH (Graz, Austria) (represented by: A. Petsche, N. Niejahr and Q. Azau, lawyers, and F. Young, Solicitor)

Defendants: Commission of the European Communities and European Agency for Reconstruction

Form of order sought

— Annul the decision;

— order the EAR to produce certain documents;

— order the EAR to pay damages in respect of the loss suffered by the applicants in the amounts of EUR 26 862,17 and EUR 3 197 968,80 for costs and lost profit, plus compensatory interest from the date on which the damage materialised;

— order the EAR to pay interest on the damages from the date of judgment;

— order the EAR and the Commission to pay their own costs and the applicants' costs in connection with these proceedings.

Pleas in law and main arguments

The applicants contest the European Agency for Reconstruction's decision of 29 August 2007 confirming the rejection of the applicants' bid and the award of the contract to another tenderer relating to the tender notice EuropeAid/124192/D/SUP/YU (OJ 2006/S 233-248823) for the supply, delivery, installation, after-sales service and training in the use of supplies for treatment and transport of medical waste throughout the Republic of Serbia (excluding Kosovo). The applicants further request compensation for the alleged damages caused by the decision.

In support of their application, the applicants submit that the contracting authority violated the award criteria for the tender, as the offer of the successful tenderer did not meet the technical specifications.

Furthermore, the applicants allege that the contracting authority violated the applicable procurement procedure, that it did not state reasons and that it breached the principle of sound administration.

Action brought on 7 November 2007 — Crunch Fitness International v OHIM — ILG (CRUNCH)

(Case T-408/07)

(2008/C 8/40)

Language of the case: English

Parties

Applicant: Crunch Fitness International Inc. (New York, United States) (represented by: J. Barry, Solicitor)

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

Other party to the proceedings before the Board of Appeal: ILG Ltd (Dun Laoghaire, Ireland)

Form of order sought

— The decision of the Fourth Board of Appeal in relation to class 41 of the CTM be annulled;

— the CTM remain registered for services in class 41; and

— order that OHIM pay its costs both in these proceedings and in the appeal proceedings before OHIM.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark 'CRUNCH' for goods and services in classes 9, 25 and 41 — Community trade mark No 62 083

Proprietor of the Community trade mark: The applicant

Party requesting the declaration of invalidity of the Community trade mark: ILG Ltd

Decision of the Cancellation Division: Partial declaration of invalidity of the Community trade mark for the goods and services in classes 9 and 25

Decision of the Board of Appeal: Declaration of invalidity of the Community trade mark also for the services in class 41

Pleas in law: Infringement of Article 50(1)(a), alternatively Article 50(2), of Council Regulation No 40/94, as the Board of Appeal erred in finding that there was no genuine use of the trade mark in question in the Community in connection with the services in class 41.

Action brought on 16 November 2007 — Cohausz v OHIM — Izquierdo Faces (acopat)

(Case T-409/07)

(2008/C 8/41)

Language of the case: English

Parties

Applicant: Prof. Dr.-Ing. Helge B. Cohausz (Düsseldorf, Germany) (represented by: I. Friedhoff, lawyer)

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

Other party to the proceedings before the Board of Appeal: José Izquierdo Faces (Bilbao, Spain)

Form of order sought

— Annul the contested action [decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 September 2007 in Case R 289/2006-1];

— order intervener and/or [OHIM] to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark 'acopat' for services in classes 35 and 42 — Community trade mark No 1 643 782

Proprietor of the Community trade mark: José Izquierdo Faces

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The national word mark 'COPAT' for goods and services in classes 9, 35, 41 and 42

Decision of the Cancellation Division: Declaration of invalidity of the Community trade mark

Decision of the Board of Appeal: Annulment of the Cancellation Division's decision and dismissal of the request for a declaration of invalidity

Pleas in law: Infringement of Article 56(2) and (3) of Council Regulation No 40/94 and Rules 22(2) and 40(5) of Commission Regulation No 2868/95, as the Board of Appeal incorrectly found that the national trade mark had not been used in Germany during the period 1996 to 2001.

Action brought on 16 November 2007 — Jurado Hermanos, S.L. v OHIM (JURADO)

(Case T-410/07)

(2008/C 8/42)

Language of the case: Spanish

Parties

Applicant: Jurado Hermanos, S.L. (Alicante, Spain) (represented by C. Martín Álvarez, lawyer)

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

Form of order sought

— Annul the decision of the Second Board of Appeal of 3 September 2007 in Case R 866/2007-2;

— Give judgment on the merits of the case, recognising JURADO HERMANOS, S.L., as an interested party in the renewal procedure for Community trade mark No 240.218, JURADO HERMANOS, S.L. being the exclusive and registered licensee of that mark, and acceding to the application for *restitutio in integrum* filed by JURADO HERMANOS, S.L. in relation to the renewal of the Community trade mark No 240.218, and

— Order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: word mark 'JURADO' (Application No 240.218).

Goods or Services: goods in Class 30.

Proprietor of the trade mark which is the subject of the application: CAFETAL DE COSTA RICA S.A.

Decision of the Examiner: dismissal by the Administration of Trade Marks and Legal Division of the application for *restitutio in integrum* brought by the applicant, the licensee of the trade mark in question, as a result of the cancellation of the registration of that trade mark, owing to the failure of the proprietor to seek the appropriate renewal.

Decision of the Board of Appeal: dismissal of the appeal.

Pleas in law: infringement of the right to a fair hearing and an incorrect interpretation, in the present case, of Articles 47 and 78(1) of Regulation (EC) No 40/94 on the Community trade mark.

Action brought on 19 November 2007 — Aer Lingus Group v Commission

(Case T-411/07)

(2008/C 8/43)

Language of the case: English

Parties

Applicant: Aer Lingus Group plc (Dublin, Ireland) (represented by: A. Burnside, Solicitor, B. van de Walle de Ghelcke, lawyer, T. Snels, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the contested decision adopted by the European Commission on 11 October 2007;

— order the Commission to pay the costs.

Pleas in law and main arguments

By means of this application, the applicant seeks annulment of Commission Decision C(2007) 4600 of 11 October 2007 by which the Commission rejected the applicant's request to initiate proceedings under Article 8(4) and to adopt interim measures under Article 8(5) of Council Regulation (EC) No 139/2004 (the 'EC Merger Regulation'), following Commission Decision C(2007) 3104 of 27 June 2007 ('the Prohibition Decision') declaring a concentration incompatible with the common market and the functioning of the EEA Agreement (Case COMP/M.4439 — Ryanair — Aer Lingus).

The applicant submits that the Commission has both misconstrued and misapplied Articles 8(4) and 8(5) of the EC Merger Regulation by stating that it did not have the power to require Ryanair, following the Prohibition Decision, to divest its minority stake in Aer Lingus, or to take other measures to restore the status quo ante, or to take interim measures in the meantime.

The applicant claims in particular that, since the Commission explicitly treated this minority stake and Ryanair's associated public offer for Aer Lingus as forming integral parts of the same single concentration, it follows that the prohibited concentration has been partially implemented. Moreover, the applicant contends that Articles 8(4) and 8(5) of the EC Merger Regulation empower the Commission in these circumstances to act to address the adverse effects on competition arising from this minority shareholding linking two companies which have been held to be each other's closest competitors on air transport routes to and from Ireland.

The applicant further claims that the Commission has acted in breach of Article 21(3) of the EC Merger Regulation by failing to assert its exclusive jurisdiction and instead leaving open the possibility on intervention by Member States.

Action brought on 14 November 2007 — Bayern Innovativ v OHIM — Life Sciences Partners Perstock (LifeScience)

(Case T-413/07)

(2008/C 8/44)

Language of the case: English

Parties

Applicant: Bayern Innovativ — Bayerische Gesellschaft für Innovation und Wissenstransfer mbH (Nürnberg, Germany) (represented by: A. Beschorner, B. Glaser, C. Thomas, lawyers)

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

Other party to the proceedings before the Board of Appeal: Life Sciences Partners Perstock N.V. (Amsterdam, The Netherlands)

Form of order sought

— To annul the decision of the First Board of Appeal No R 1545/2006-1 of 2 August 2007 regarding Community trade mark No 3 585 957 'LifeScience';

— to reject the opposition No B 795 270 of the intervener in its entirety;

— to order the OHIM to register the Community trade mark No 3 585 957 'LifeScience' as published;

— to order the other party to pay the costs incurred in the proceedings before the Court and to order the intervener to pay the costs of the administrative proceedings before the Board of Appeal.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative Community trade mark consisting of a coloured representation of a spiral DNA chain, an oval and a grid and containing the verbal elements 'LifeScience' written below for goods and services in Classes 16, 35, 36, 41, 42 — application No 3 585 957

Proprietor of the mark or sign cited in the opposition proceedings: Life Sciences Partners Perstock N.V.

Mark or sign cited: The figurative Community trade mark consisting of a representation of a naked woman wrapped in a DNA chain and containing the word elements 'Life Sciences Partners' for services in Classes 35 and 36 — application No 2 136 026.

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of (EC) Council Regulation No 40/94.

Action brought on 21 November 2007 — RedEnvelope v OHIM — Red Letter Days (redENVELOPE)

(Case T-415/07)

(2008/C 8/45)

Language of the case: English

Parties

Applicant: RedEnvelope Inc. (San Francisco, United States) (represented by: A. Poulter, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Red Letter Days Ltd (London, United Kingdom)

Form of order sought

— Annul the decision of the First Board of Appeal dated 14 September 2007, No R 1117/2005-1, in so far as the decision provided for the admission of new evidence in support of the grounds of opposition;

— order that the defendant pays the applicant's costs of this appeal.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'redENVELOPE' for services in classes 35 and 42 — application No 1 601 327

Proprietor of the mark or sign cited in the opposition proceedings: Red Letter Days Ltd

Mark or sign cited: The registered and non-registered national word and figurative marks 'RED LETTER', 'RED LETTER DAYS' and 'RED LETTER DAYS PLC' for goods and services in classes 9, 14, 16, 18, 21, 22, 25, 26, 33, 36, 39, 41, 42, 43 and 44

Decision of the Opposition Division: Opposition partially upheld

Decision of the Board of Appeal: Annulment of the Opposition Division's decision and remittal of the case to the Opposition Division for further consideration in so far as it regards Article 8(4) of Council Regulation No 40/94

Pleas in law: Violation of Article 74(2) of Council Regulation No 40/94, as the Board of Appeal admitted new evidence, which will allow the Opposition Division to make a decision based on evidence, which was not available earlier in the proceedings and to which the applicant has not had an opportunity to respond before the Opposition Division.

Action brought on 21 November 2007 — RedEnvelope v OHIM — Red Letter Days (REDENVELOPE)

(Case T-416/07)

(2008/C 8/46)

Language of the case: English

Parties

Applicant: RedEnvelope Inc. (San Francisco, United States) (represented by: A. Poulter, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Red Letter Days Ltd (London, United Kingdom)

Form of order sought

— Annul the decision of the First Board of Appeal dated 14 September 2007, No R 765/2005-1, in so far as the decision provided for the admission of new evidence in support of the grounds of opposition;

— order that the defendant pays the applicant's costs of this appeal.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'REDENVELOPE' for services in classes 35 and 42 — application No 1 601 392

Proprietor of the mark or sign cited in the opposition proceedings: Red Letter Days Ltd

Mark or sign cited: The registered and non-registered national word and figurative marks 'RED LETTER', 'RED LETTER DAYS' and 'RED LETTER DAYS PLC' for goods and services in classes 9, 14, 16, 18, 21, 22, 25, 26, 33, 36, 39, 41, 42, 43 and 44

Decision of the Opposition Division: Opposition partially upheld

Decision of the Board of Appeal: Annulment of the Opposition Division's decision and remittal of the case to the Opposition Division for further consideration in so far as it regards Article 8(4) of Council Regulation No 40/94

Pleas in law: Violation of Article 74(2) of Council Regulation No 40/94, as the Board of Appeal admitted new evidence, which will allow the Opposition Division to make a decision based on evidence, which was not available earlier in the proceedings and to which the applicant has not had an opportunity to respond before the Opposition Division.

Action brought on 16 November 2007 — Lodato Gennaro & C. v Commission

(Case T-417/07)

(2008/C 8/47)

Language of the case: Italian

Parties

Applicant: Lodato Gennaro & C. Spa (Castel San Giorgio, Italy) (represented by: M.A. Calabrese, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Order the annulment of Commission Decision SG/E/3/MIB/frw D(2007) 8690 of 8 October 2007;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The action is brought against the Commission decision of 8 October 2007, which refused access to certain documents sent to the Commission by the Italian Government in the context of a preliminary examination of State aid, Cases No 701/98 and 824/01, with reference to the opposition to disclosure expressed by the Italian Government following its consultation by Commission staff.

In support of its claims, the applicant alleges infringement and misapplication of Article 4(5) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ([1]). It claims in this regard that the Commission erred in its interpretation of that provision, by granting Member States the power to prohibit the disclosure of documents originating from the Member State and held by Community institutions.

([1]) OJ L 145, 31.5.2001, p. 43.

Action brought on 19 November 2007 — LIBRO v OHIM — Causley (LiBRO)

(Case T-418/07)

(2008/C 8/48)

Language in which the application was lodged: German

Parties

Applicant: LIBRO Handelsgesellschaft mbH (Guntramsdorf, Austria) (represented by: G. Prantl, 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: Dagmar Causley (Pleidesheim, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 3 September 2007 (Case 1454/2005-4) and alter it so as to allow the applicant's appeal lodged with the Office for Harmonisation in the Internal Market and as a consequence to reject the objection in its entirety;

— Order the Office for Harmonisation in the Internal Market and any interveners jointly to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: LIBRO Handelsgesellschaft mbH

Community trade mark concerned: the word and figurative mark 'LiBRO' for goods and services in classes 2, 9, 14, 16, 18, 20, 25, 28, 35, 38, 41 and 42 (Application No 2 616 753).

Proprietor of the mark or sign cited in the opposition proceedings: Dagmar Causley.

Mark or sign cited in opposition: The figurative mark 'LIBERO' for goods and services in classes 9, 38 and 42 (Community trade mark No 401 141).

Decision of the Opposition Division: partial rejection of the application.

Decision of the Board of Appeal: partial annulment of the decision of the Opposition Division.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 [1] as there is no likelihood of confusion of the opposing trade marks.

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

Action brought on 19 November 2007 — Okalux v OHIM — Messe Düsseldorf (OKATECH)

(Case T-419/07)

(2008/C 8/49)

Language in which the application was lodged: German

Parties

Applicant: Okalux GmbH (Marktheidenfeld, Germany) (represented by: M. Beckensträter, 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: Messe Düsseldorf GmbH

Form of order sought

— Annul the decision of the Second Board of Appeal of 3 September 2007 in Case R 766/2007-2, notified on 18 September 2007, and dismiss the application for partial revocation of 16 December 2006 of Community trade mark No 915 058 for the reasons stated in the appeal of 16 May 2007;

— Alternatively, refer the case back for decision on the appeal of 16 May 2007 to the Cancellation Division;

— Order the defendant or the other parties to the proceedings before the Board of Appeal to pay the reimbursable costs, including the costs of the main proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the word mark 'OKATECH' for goods and services in classes 6, 19 and 42 (Community trade mark No 915 058).

Proprietor of the Community trade mark: Okalux GmbH

Applicant for the declaration of invalidity: Messe Düssseldorf GmbH

Decisions of the Cancellation Division: Declaration of the invalidity of the trade mark concerned for services in class 42; revocation of that decision with regard to the costs.

Decision of the Board of Appeal: Dismissal of the appeal as inadmissible.

Pleas in law: In particular, infringement of Article 57 and 77a of Regulation (EC) No 40/94 ([1]) and violation of the right to be heard.

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

Action brought on 15 November 2007 — Ryanair v Commission

(Case T-423/07)

(2008/C 8/50)

Language of the case: English

Parties

Applicant: Ryanair Ltd (Dublin, Ireland) (represented by: E. Vahida, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— To declare in accordance with Article 232 EC that the Commission has failed to act pursuant to its obligations under the EC Treaty by not having defined a position with respect to the applicant's complaint lodged with the Commission on 3 November 2005 followed by a letter of formal notice of 31 July 2007;

— to order the Commission to pay the entire costs, including the costs incurred by the applicant in the proceedings even if, following the bringing of the action, the Commission takes action which in the opinion of the Court removes the need to give a decision or if the Court dismisses the application as inadmissible;

— take such further action as the Court may deem appropriate.

Pleas in law and main arguments

By means of its application, the applicant claims that the Commission has failed to act by not having defined its position, after having been invited to do so under Article 232 EC, on the basis of a complaint filed by the applicant on 3 November 2005, regarding unlawful State aid granted to Lufthansa and its Star Alliance partners through the exclusive use of Terminal 2 of Munich Airport or, in the alternative, anti-competitive discrimination in favour of Lufthansa and its Star Alliance partners, should it be considered that the Munich Airport acted autonomously. The reservation of this Terminal by Munich Airport to the applicant's potential competitors would constitute an abuse of dominance and hence infringement of Article 82 EC.

In support of its first plea, the applicant submits that the Commission was under a duty to carry out a diligent and impartial examination of the complaint in accordance with Council Regulation (EC) 659/1999 ([1]), Council Regulation (EC) No 1/2003 ([2]) and Commission Regulation (EC) 773/2004 ([3]), in order to either adopt a decision declaring that the State measures did not amount to aid within the meaning of Article 87(1) EC, or that those measures were to be classified as aid within the meaning of the said provision but were compatible with the common market under Article 87(2) and (3) EC, or to initiate a procedure under Article 88(2) EC.

In the alternative, the applicant submits that the Commission was required, upon receipt of its subsidiary complaint relating to an alleged abuse of dominance, either to initiate a procedure regarding the subject of the complaint or to adopt a definitive decision rejecting the complaint, after having given the complainant the opportunity to comment.

The applicant further submits that the period of twenty months which elapsed between the applicant's complaint and its letter of formal notice was unreasonably long, and the inaction of the Commission during that period constitutes failure to act within the meaning of Article 232 EC.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, p. 1).

([2]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance) (OJ L 1, p. 1).

([3]) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (Text with EEA relevance) (OJ L 123, p. 18).

Action brought on 20 November 2007 — Pioneer Hi-Bred International v OHIM (OPTIMUM)

(Case T-424/07)

(2008/C 8/51)

Language of the case: English

Parties

Applicant: Pioneer Hi-Bred International Inc. (Johnston, United States) (represented by: G. Würtenberger, R. Kunze, and T. Wittmann, lawyers)

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

Form of order sought

— The decision of the Second Board of Appeal of 11 September 2007 in Case R 288/2007-2 concerning Community trade mark application No 4 893 053 'OPTIMUM' be annulled;

— defendant pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'OPTIMUM' for goods in class 1 — application No 4 893 053

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Articles 7(1)(b) and (c), 7(2), 73 and 74 of Council Regulation No 40/94 by not taking into consideration the fact that the goods in question address a specialised public and by not supporting the decision on evidence of use of the trade mark applied for.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 22 November 2007 — Michail v Commission

(Case F-67/05) ([1])

(Civil service — Officials — Evaluation — Career evaluation report — 2003 evaluation period — Action for annulment — Action for damages)

(2008/C 8/52)

Language of the case: French

Parties

Applicant: Christos Michail (Brussels, Belgium) (represented by: C. Meïdanis, lawyer)

Defendant: Commission of the European Communities (represented by: H. Tserepa-Lacombe, Agent, assisted by E. Bourtzalas, lawyer)

Re:

On the one hand, an application for the annulment of the applicant's career evaluation report for the evaluation period from 1 April 2003 to 31 December 2003 and, on the other, a claim for damages.

Operative part of the judgment

The Tribunal:

1. *Annuls Mr Michail's career evaluation report for the evaluation period from 1 April 2003 to 31 December 2003;*

2. *Dismisses the remainder of the application;*

3. *Orders the Commission of the European Communities to pay the costs.*

([1]) OJ C 229 of 17.9.2005, p. 33 (case initially registered before the Court of First Instance of the European Communities as Case T-284/05 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005).

Judgment of the Civil Service Tribunal (Second Chamber) of 22 November 2007 — Michail v Commission

(Case F-34/06) ([1])

(Civil service — Officials — Evaluation — Career evaluation report — 2004 evaluation period — Action for annulment — Action for damages)

(2008/C 8/53)

Language of the case: French

Parties

Applicant: Christos Michail (Brussels, Belgium) (represented by: C. Meïdanis)

Defendant: Commission of the European Communities (represented initially by C. Berardis-Kayser and K. Herrmann, Agents, and later by H. Tserepa-Lacombe, Agent, assisted by E. Bourtzalas, lawyer)

Re:

On the one hand, annulment of the applicant's career evaluation report for the 2004 evaluation period and, on the other, a claim for damages.

Operative part of the judgment

The Tribunal:

1. *Dismisses the application;*

2. *Orders the parties to bear their own costs.*

([1]) OJ C 154 of 1.7.2006, p. 24.

Judgment of the Civil Service Tribunal (Second Chamber) of 22 November 2007 — Dittert v Commission

(Case F-109/06) ([1])

(Civil service — Officials — Promotion — Priority points — Incomplete personal file — Omission of priority points from the computer promotion file known as 'Sysper 2' — Technical problem — A* Promotion Committee — Allocation of a lower number of points than had been proposed by the applicant's superiors)

(2008/C 8/54)

Language of the case: French

Parties

Applicant: Daniel Dittert (Luxembourg, Luxembourg) (represented by: B. Cortese and C.Cortese, lawyers)

Defendant: Commission of the European Communities (represented by: G. Berscheid and K. Herrmann, Agents)

Re:

Annulment of the Appointing Authority's decision to allocate to the applicant, an official of the Commission who had been omitted in error from the promotion list in his Directorate-General, fewer priority points than the latter wished to give him and which were insufficient to allow his promotion in the 2005 exercise.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the Commission of the European Communities allocating to Mr Dittert an insufficient number of points to allow his promotion in the 2005 exercise;*

2. *Annuls the decision of the Commission of the European Communities fixing the list of officials promoted in the 2005 exercise, published in Informations Administratives No 85-2005 of 23 November 2005, in so far as it does not contain Mr Dittert's name;*

3. *Orders the Commission of the European Communities to bear its own costs and to pay those of Mr Dittert.*

([1]) OJ C 281 of 18.11.2006, p 47.

Judgment of the Civil Service Tribunal (Second Chamber) of 22 November 2007 — Carpi Badía v Commission

(Case F-110/06) ([1])

(Civil service — Officials — Promotion — Priority points — Incomplete personal file — Omission of priority points from the computer promotion file known as 'Sysper 2' — Technical problem — A* Promotion Committee — Allocation of a lower number of points than had been proposed by the applicant's superiors)

(2008/C 8/55)

Language of the case: French

Parties

Applicant: José María Carpi Badía (Luxembourg, Luxembourg) (represented by: B. Cortese and C. Cortese, lawyers)

Defendant: Commission of the European Communities (represented by: G. Berscheid and K. Herrmann)

Re:

Annulment of the Appointing Authority's decision to allocate to the applicant, an official of the Commission who had been omitted in error from the promotion list in his Directorate-General, fewer priority points than the latter wished to give him and which were insufficient to allow his promotion in the 2005 exercise.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the Commission of the European Communities allocating to Mr Carpi Badía an insufficient number of points to allow his promotion in the 2005 exercise;*

2. *Annuls the decision of the Commission of the European Communities fixing the list of officials promoted in the 2005 exercise, published in Informations Administratives No 85-2005 of 23 November 2005, in so far as it does not contain Mr Carpi Badía's name;*

3. *Orders the Commission of the European Communities to bear its own costs and to pay those of Mr Carpi Badía.*

([1]) OJ C 281 of 18.11.2006, p 48.

Action brought on 31 October 2007 — Menidiatis v Commission

(Case F-128/07)

(2008/C 8/56)

Language of the case: French

Parties

Applicant: Andreas Menidiatis (Sint-Genesius-Rode, Belgium) (represented by: S. Pappas, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the Commission decision of 21 December 2006 rejecting the applicant's candidature for the vacant post of head of representation of the Commission to Greece and appointing another candidate to that post;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his action, the applicant relies on a number of pleas in law against the decision to reject his candidature for the vacant post of head of representation of the Commission to Greece. First, he pleads that the selection procedure was unlawful and not complied with. Secondly, he pleads that the notice of vacancy was unlawful and not complied with.

A further plea in law alleges infringement of Article 11a of the Staff Regulations. Moreover, the applicant pleads the unlawfulness of the downgrading of the post of head of representation in Athens and the unlawfulness of the decision of 7 July 2004 concerning the detailed rules for filling head-of-representation posts.

In addition, the lateness of the publication of the notice of vacancy is relied on along with the failure to state reasons for refusing access to the documents requested by the applicant in his complaint. Finally, the applicant relies on the breach of the rules concerning the rotation of staff occupying 'sensitive posts' and submits that there are numerous factors indicating a misuse of powers.

Action brought on 31 October 2007 — Kremlis v Commission

(Case F-129/07)

(2008/C 8/57)

Language of the case: French

Parties

Applicant: Georges-Stavros Kremlis (Brussels, Belgium) (represented by: S. Pappas, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the Commission decision of 21 December 2006, rejecting the applicant's candidature for the vacant post of head of representation of the Commission to Greece and appointing another candidate to that post;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant relies on very similar pleas in law to those relied on in Case F-128/07, the notice of which is published in this issue of the *Official Journal of the European Union*.

Action brought on 31 October 2007 — Vinci v European Central Bank

(Case F-130/07)

(2008/C 8/58)

Language of the case: German

Parties

Applicant: Fiorella Vinci (Schöneck, Germany) (represented by: B. Karthaus, lawyer)

Defendant: European Central Bank

Form of order sought

— Find that the inclusion of the defendant's letter of 5 March 2007 (07) 139a H KK7bk HEAL and of the letter of 5 March 2007 (07) 139b H KK/bk HEAL, and the storage of the 'medical certificate' of Dr Schön of 24 April 2007 in the personal file, and the inclusion of the result of the examination of the Deutsche Klinik für Diagnostik concerning the applicant's state of health of 2 April 2007 in the medical file, is unlawful;

— Find that the defendant's decision of 3 September 2007 (07) 772 PSR JMC/cc APPE, by which it refuses to delete the personal data contained in the documents referred to under point 1 above, is unlawful;

— Find that the defendant's order of 5 March 2007 to submit to a medical examination, lacks legal effect;

— Order the defendant to pay the applicant EUR 10 000;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant seeks first an order finding that the inclusion of the documents referred to in that application in her personal file and in the separately kept medical file is unlawful. Second, the applicant seeks a finding that the refusal of the defendant to delete the illegally obtained personal data is unlawful. In its reasoning, the applicant claims that Staff Rule 5.13.4 of the European Central Bank (ECB), which does not provide a basis for the processing of the categories of personal data referred to in Article 10 of Regulation No 45/2001 of the Council and of the European Parliament of 18 December 2002 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ('Regulation No 45/2001'), and which, contrary to Article 10(2)(b) of Regulation No 45/2001, does not lay down any objective which would make processing necessary, precludes the obtaining and storage of the medical data.

Thirdly, the applicant seeks an order annulling the Commission's decision of 5 March 2007 by which the applicant was ordered to undergo a medical examination. The applicant derives the nullity from the objection of abuse of discretion and from the failure to observe the essential procedural rules which are contained in Staff Rule 5.13.4. That rule provides that it is only the 'Medical Adviser' established at the ECB who is entitled to order further measures of a medical nature such as examinations, and not the applicant's direct superior.

Furthermore, the applicant claims compensation for non-material damage which she suffered as a result of having to undergo a full medical examination for which there was no adequate legal basis.