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(2014/C 151/01)

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

OJ C 142, 12.5.2014

Past publications

OJ C 135, 5.5.2014

OJ C 129, 28.4.2014

OJ C 112, 14.4.2014

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These texts are available on:

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 27 March 2014 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — UPC Telekabel Wien GmbH v Constantin Film Verleih GmbH, Wega Filmproduktionsgesellschaft mbH

(Case C-314/12) ([1])

(Reference for a preliminary ruling — Approximation of laws — Copyright and related rights — Information society — Directive 2001/29/EC — Website making cinematographic works available to the public without the consent of the holders of a right related to copyright — Article 8(3) — Concept of 'intermediaries whose services are used by a third party to infringe a copyright or related right' — Internet service provider — Order addressed to an internet service provider prohibiting it from giving its customers access to a website — Balancing of fundamental rights)

(2014/C 151/02)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: UPC Telekabel Wien GmbH

Defendants: Constantin Film Verleih GmbH, Wega Filmproduktionsgesellschaft mbH

Re:

Request for a preliminary ruling — Oberster Gerichtshof — Interpretation of Articles 3(2), 5(1) and (2)(b), and 8(3) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) — Internet site allowing illegal downloading of films — Right of the copyright holder of one of those films to require an Internet service provider to block its customers' access to that specific site — Feasibility and proportionality of the blocking measures

Operative part of the judgment

1. *Article 8(3) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted as meaning that a person who makes protected subject-matter available to the public on a website without the agreement of the rightholder, for the purpose of Article 3(2) of that directive, is using the services of the internet service provider of the persons accessing that subject-matter, which must be regarded as an intermediary within the meaning of Article 8(3) of Directive 2001/29.*

2. *The fundamental rights recognised by EU law must be interpreted as not precluding a court injunction prohibiting an internet service provider from allowing its customers access to a website placing protected subject-matter online without the agreement of the rightholders when that injunction does not specify the measures which that access provider must take and when that access provider can avoid incurring coercive penalties for breach of that injunction by showing that it has taken all reasonable measures, provided that (i) the measures taken do not unnecessarily deprive internet users of the possibility of lawfully accessing the information available and (ii) that those measures have the effect of preventing unauthorised access to the protected subject-matter or, at least, of making it difficult to achieve and of seriously discouraging internet users who are using the services of the addressee of that injunction from accessing the subject-matter that has been made available to them in breach of the intellectual property right, that being a matter for the national authorities and courts to establish.*

([1]) OJ C 303, 6.10.2012.

Judgment of the Court (First Chamber) of 27 March 2014 — Office for Harmonisation in the Internal Market (Trade Marks and Designs) v National Lottery Commission

(Case C-530/12 P) ([1])

(Appeals — Community trade mark — Regulation (EC) No 40/94 — Article 52(2)(c) — Application for a declaration of invalidity based on an earlier copyright under national law — Application by OHIM of national law — Role of the European Union judicature)

(2014/C 151/03)

Language of the case: English

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Bullock and F. Mattina, Agents)

Other party to the proceedings: National Lottery Commission (represented by: R. Cardas, Advocate, and B. Brandreth, Barrister)

Re:

Appeal against the judgment of the General Court (Seventh Chamber) of 13 September 2012 in Case T-404/10 *National Lottery Commission* v *OHIM*, by which the General Court dismissed Decision R 1028/2009-1 of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 9 June 2010, dismissing the appeal against the decision of the Cancellation Division which upheld the application for a declaration of invalidity lodged by Mediatek Italia and Giuseppe De Grégorio — Community figurative mark representing a hand with two crossed fingers and a smiling face — Article 53(2)(c) of Regulation (EC) No 207/2009 — Existence of an earlier copyright protected by national law — Burden of proof — Application by OHIM of national law.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 13 September 2012 in Case T-404/10 National Lottery Commission v OHIM — Mediatek Italia and De Gregorio (Representation of a hand);*

2. *Refers the case back to the General Court of the European Union for a ruling on the merits of the action;*

3. *Orders that the costs be reserved.*

([1]) OJ C 26, 26.1.2013.

Judgment of the Court (Fourth Chamber) of 27 March 2014 (request for a preliminary ruling from the Tribunal d'instance d'Orléans — France) — LCL Le Crédit Lyonnais SA v Fesih Kalhan

(Case C-565/12) ([1])

(Consumer protection — Credit agreements for consumers — Directive 2008/48/EC — Articles 8 and 23 — Creditor's obligation to assess the borrower's creditworthiness prior to conclusion of the agreement — National provision imposing the obligation to consult a database — Forfeiture of entitlement to contractual interest in the event of failure to comply with that obligation — Effective, proportionate and dissuasive nature of the penalty)

(2014/C 151/04)

Language of the case: French

Referring court

Tribunal d'instance d'Orléans

Parties to the main proceedings

Applicant: LCL Le Crédit Lyonnais SA

Defendant: Fesih Kalhan

Re:

Request for a preliminary ruling — Tribunal d'instance d'Orléans — Interpretation of Article 23 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66), in the light of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — Credit institution's obligation to check the borrower's creditworthiness — Requirement for effective, proportionate and dissuasive penalties in the event of the creditor's failure to fulfil that obligation — Forfeiture of entitlement to contractual interest — Whether it is permissible to maintain for the creditor's benefit statutory interest that becomes payable by operation of law at an increased statutory rate

Operative part of the judgment

Article 23 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC must be interpreted as precluding the application of a national system of penalties under which, in the event of failure on the part of the creditor to comply with its obligation, prior to conclusion of an agreement, to assess the borrower's creditworthiness by consulting the relevant database, that creditor forfeits its entitlement to contractual interest but is automatically entitled to interest at the statutory rate, payable from the date of delivery of a court decision ordering that borrower to pay the outstanding sums, which is further increased by five percentage points if, on expiry of a period of two months following that decision, the borrower has not repaid his debt in full, where the referring court finds that — in a case such as that in the main proceedings, in which the outstanding amount of the principal of the loan is immediately payable as a result of the borrower's default — the amounts which the creditor is in fact likely to receive following the application of the penalty of forfeiture of entitlement to contractual interest are not significantly lower than those which it could have received had it complied with its obligation to assess the borrower's creditworthiness.

([1]) OJ C 38, 9.2.2013.

Judgment of the Court (Fifth Chamber) of 27 March 2014 — Ballast Nedam NV v European Commission

(Case C-612/12 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Setting of the gross price for road pavement bitumen — Setting of a rebate for road builders — Regulation (EC) No 1/2003 — Article 27 — Rights of the defence — Reduction of the fine)

(2014/C 151/05)

Language of the case: Dutch

Parties

Appellant: Ballast Nedam NV (represented by: A. Bosman and E. Oude Elferink, advocaten)

Other party to the proceedings: European Commission (represented by: F. Ronkes Agerbeek and P. Van Nuffel, Agents, and by F. Tuytschaever, avocat)

Re:

Appeal brought against the judgment of 27 September 2012 in Case T-361/06 *Ballast Nedam* v *Commission*, by which the General Court (Sixth Chamber) dismissed an action brought by Ballast Nedam for annulment of Commission Decision C (2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)), in so far as it concerned Ballast Nedam; and, in the alternative, for partial annulment of that decision, to the extent that it sets the duration of the infringement with respect to Ballast Nedam, and reduction of the fine imposed on Ballast Nedam.

Operative part of the judgment

The Court:

1. *Sets aside the judgment in Case T-361/06 Ballast Nedam v Commission to the extent that it rejects the plea in law raised by Ballast Nedam NV relating to the infringement of Article 27(1) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [81 EC] and [82 EC] and of the rights of the defence during the administrative procedure which led to Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article [81 EC] (Case COMP/F/38.456 — Bitumen (Netherlands));*

2. *Annuls Article 1(a) of Decision C(2006) 4090 final to the extent that it concerns Ballast Nedam NV's infringement of Article 81 EC during the period from 21 June 1996 to 30 September 2000;*

3. *Annuls Article 2(a) of Decision C(2006) 4090 final to the extent that it sets the amount of the fine payable by Ballast Nedam NV at EUR 4,65 million;*

4. *Sets the amount of the fine imposed jointly and severally on Ballast Nedam NV under Article 2(a) of Decision C(2006) 4090 final at EUR 3,45 million;*

5. *Orders the European Commission to pay all costs relating to the present appeal;*

6. *Orders each of the parties to bear its own costs in relation to the proceedings at first instance.*

([1]) OJ C 71, 9.3.2013.

Judgment of the Court (Third Chamber) of 27 March 2014 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Alpina River Cruises GmbH, Nicko Tours GmbH v Ministero delle infrastrutture e dei trasporti — Capitaneria di Porto di Chioggia

(Case C-17/13) ([1])

(Maritime transport — Regulation (EEC) No 3577/92 — Concept of 'maritime cabotage' — Cruise services — Cruise crossing the Venetian lagoon, Italian territorial sea and the river Po — Departure from and arrival at the same port)

(2014/C 151/06)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Alpina River Cruises GmbH, Nicko Tours GmbH

Defendant: Ministero delle infrastrutture e dei trasporti — Capitaneria di Porto di Chioggia

Re:

Request for a preliminary ruling — Consiglio di Stato — Interpretation of Article 2 of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7) — Scope — Concept of maritime cabotage — Cruise service — Departure and arrival of passengers in one and the same port after calling at other ports

Operative part of the judgment

A maritime transport service consisting of a cruise which starts and ends, with the same passengers, in the same port of the Member State in which it takes place, is covered by the term 'maritime cabotage' within the meaning of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage).

([1]) OJ C 86, 23.3.2013.

Judgment of the Court (Sixth Chamber) of 27 March 2014 (request for a preliminary ruling from the Cour administrative d'appel de Versailles — France) — Le Rayon d'Or SARL v Ministre de l'Économie et des Finances

(Case C-151/13) ([1])

(Request for a preliminary ruling — Taxation — VAT — Scope — Determination of the taxable amount — Concept of 'subsidy directly linked to the price' — Payment of a lump sum by the national sickness insurance fund to residential care homes for the elderly)

(2014/C 151/07)

Language of the case: French

Referring court

Cour administrative d'appel de Versailles

Parties to the main proceedings

Applicant: Le Rayon d'Or SARL

Defendant: Ministre de l'Économie et des Finances

Re:

Request for a preliminary ruling — Cour administrative d'appel de Versailles — Interpretation of Article 11A(1)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), repeated in Article 73 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Scope of VAT — Subsidy directly linked to the cost of providing healthcare — Inclusion of the 'healthcare lump sum' paid by the sickness insurance funds to residential care homes for the elderly.

Operative part of the judgment

Article 11A(1)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment and Article 73 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a lump-sum payment such as the 'healthcare lump sum' at issue in the main proceedings constitutes the consideration for the healthcare provided for consideration by a residential care home for the elderly to its residents and, on that basis, falls within the scope of value added tax.

([1]) OJ C 171, 15.6.2013.

Judgment of the Court (Second Chamber) of 27 March 2014 (request for a preliminary ruling from the Juzgado de lo Social No 2 de Terrassa — Spain) — Emiliano Torralbo Marcos v Korota SA, Fondo de Garantía Salarial

(Case C-265/13) ([1])

(Request for a preliminary ruling — Charter of Fundamental Rights of the European Union — Article 47 — Right to an effective remedy — Judicial fees and deposits required for lodging appeals in employment law cases — Failure to implement EU law — Scope of EU law — Lack of jurisdiction of the Court)

(2014/C 151/08)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 2 de Terrassa

Parties to the main proceedings

Applicant: Emiliano Torralbo Marcos

Defendants: Korota SA, Fondo de Garantía Salarial

Re:

Request for a preliminary ruling — Juzgado de lo Social de Terrassa — Interpretation of Art. 47 Charter of Fundamental Rights of the EU (OJ 2000, C 364, p. 1) and of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (codified version) (OJ 2008 L 283, p. 36) — Right to effective judicial protection — National legislation making the bringing of legal proceedings subject to payment of the judicial fees — Powers of the national court hearing the action — Application in the field of social policy — Insolvency of employers.

Operative part of the judgment

The Court of Justice of the European Union has no jurisdiction to answer the questions referred for a preliminary ruling by the Juzgado de la Social No 2 de Terrassa (Spain).

([1]) OJ C 207, 20.7.2013.

Judgment of the Court (Seventh Chamber) of 27 March 2014 (request for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Valenciana — Spain) — Ayuntamiento de Benferri v Consejería de Infraestructuras y Transporte, Iberdrola Distribución Eléctrica SAU

(Case C-300/13) ([1])

(Reference for a preliminary ruling — Directive 85/337/EEC — Assessment of the effects of certain projects on the environment — Construction of certain overhead electrical power lines — Extension of an electrical substation — Project not made subject to an environmental assessment)

(2014/C 151/09)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Valenciana

Parties to the main proceedings

Applicant: Ayuntamiento de Benferri

Defendants: Consejería de Infraestructuras y Transporte, Iberdrola Distribución Eléctrica SAU

Re:

Request for a preliminary ruling — Tribunal Superior de Justicia de la Comunidad Valenciana — Interpretation of point 20 of Annex I and section 3(b) of Annex II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 97/11/EC (OJ 1997 L 73, p. 5) — Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km — Concept — Project to extend an electrical substation independently of the existing overhead power line — National legislation which does not provide for the submission of that project to an environmental assessment.

Operative part of the judgment

The provisions of point 20 of Annex I and section 3(b) of Annex II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, must be interpreted as meaning that a project such as that at issue in the main proceedings, which relates only to the extension of an electrical voltage transformer substation, is not, as such, among the projects covered by those provisions, unless that extension is part of the construction of overhead electrical power lines, which it is for the national court to ascertain.

([1]) OJ C 226, 3.8.2013.

Judgment of the Court (Second Chamber) of 27 March 2014 (request for a preliminary ruling from the Landesgericht Bozen — Italy) — Ulrike Elfriede Grauel Rüffer v Katerina Pokorná

(Case C-322/13) ([1])

(Citizenship of the Union — Principle of non-discrimination — Language rules applicable to civil proceedings)

(2014/C 151/10)

Language of the case: German

Referring court

Landesgericht Bozen

Parties to the main proceedings

Applicant: Ulrike Elfriede Grauel Rüffer

Defendant: Katerina Pokorná

Re:

Request for a preliminary ruling — Tribunale di Bolzano/Landesgericht Bozen — Interpretation of Articles 18 and 21 TFEU — Non-discrimination and citizenship of the Union — Language regime applicable to civil proceedings — Derogation for nationals — Extension of that derogation to EU nationals in the same situation as nationals

Operative part of the judgment

Articles 18 TFEU and 21 TFEU must be interpreted as precluding national rules, such as those at issue in the main proceedings, which grant the right to use a language other than the official language of that State in civil proceedings brought before the courts of a Member State which are situated in a specific territorial entity, only to citizens of that State who are domiciled in the same territorial entity.

([1]) OJ C 226, 3.8.2013.

Appeal brought on 7 February 2014 by Sven A. von Storch and Others against the order of the General Court (First Chamber) delivered on 10 December 2013 in Case T-492/12 Sven A. von Storch and Others v European Central Bank

(Case C-64/14 P)

(2014/C 151/11)

Language of the case: German

Parties

Appellants: Sven A. von Storch and Others (represented by: M. C. Kerber, Rechtsanwalt, and B. von Storch, Rechtsanwältin)

Other party to the proceedings: European Central Bank

Form of order sought

The appellants claim that the Court should:

— Set aside the order of the First Chamber of the General Court of 10 December 2013 in Case T-492/12;

— Grant the form of order sought by the applicants in the application of 11 November 2012;

— Order the European Central Bank to pay the costs in accordance with Article 122(1) of the Rules of Procedure of the Court of Justice.

Pleas in law and main arguments

The appellants submit that the order of the First Chamber of the General Court of the European Union of 10 December 2013 in Case T-492/12 is vitiated by an error of law for the following reasons:

1. Since the wording of the decisions of the ECB of 6 September 2012 on a number of technical features regarding the Eurosystem's Outright Monetary Transactions in secondary sovereign bond markets and on additional measures to preserve collateral availability for counterparties in order to maintain their access to the Eurosystem's liquidity-providing operators, and

   — in the alternative, the wording of Guideline 2012/641/EU of the ECB of 10 October 2012 amending Guideline ECB/2012/18 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral (ECB/2012/23) ([1]) entail legal effects, the decisions may be the subject-matter of an action. According to settled case-law with regard to Article 19 TEU, the binding nature of an act is determined with reference to its purpose.

2. The applicants were directly and individually concerned by the contested decisions, even though those decisions are not directly addressed to them.

3. The order of 10 December 2013 is vitiated by an error of law because the General Court adopted the ECB's argument that the decisions had no effect on the legal position of citizens. At the same time, the General Court ignored the fact that the decisions actually have wide-ranging consequences for the securities markets and particularly the issue of government bonds and were equally intended by the ECB.

4. The order of 10 December 2013 is vitiated by an error of law because the General Court made the applicants' right of action dependent on an actual action of the ECB or on subsequent, more concrete transactions, action which in the specific case is likely to fall outside the knowledge of the applicants, not to mention the actual impossibility of any reversal of securities purchases.

5. The order of 10 December 2013 is vitiated by an error of law because the General Court deprived the applicants of the right to effective judicial protection guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950. In particular, the possibility referred to by the General Court of an indirect challenge by means of Article 277 TFEU under no circumstances has the same legal effect as an action under the fourth paragraph of Article 263 TFEU.

([1]) OJ 2012 L 284, p. 14.

Request for a preliminary ruling from the Curtea de Apel Brașov (Romania) lodged on 12 February 2014 — Mihai Manea v Instituția Prefectului — județul Brașov — Serviciul public comunitar regim permise de conducere și înmatriculare a vehiculelor

(Case C-76/14)

(2014/C 151/12)

Language of the case: Romanian

Referring court

Curtea de Apel Brașov

Parties to the main proceedings

Applicant: Mihai Manea

Defendant: Instituția Prefectului — județul Brașov — Serviciul public comunitar regim permise de conducere și înmatriculare a vehiculelor

Questions referred

1. Having regard to the provisions of Law No 9/2012 and to the purpose of the tax provided for under that law, must Article 110 TFEU be interpreted as precluding a Member State of the European Union from establishing a tax on pollutant emissions applicable to all foreign motor vehicles upon their registration in that Member State, but to national motor-vehicles upon the transfer of ownership of such vehicles, except where such a tax or a similar tax has already been paid?

2. Having regard to the provisions of Law No 9/2012 and to the purpose of the tax provided for under that law, must Article 110 TFEU be interpreted as precluding a Member State of the European Union from establishing a tax on pollutant emissions which is applicable, in the case of all foreign motor vehicles, upon their registration in that Member State, but which, in the case of national motor vehicles, is due only upon the transfer of ownership of such vehicles, the result being that a foreign vehicle cannot be used unless the tax is paid, but a national vehicle can be used for an unlimited time without the tax being paid, until the ownership of that vehicle is transferred, if such a transfer takes place?

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) (United Kingdom) made on 14 February 2014 — Union of Shop, Distributive and Allied Workers (USDAW), Mrs B. Wilson v WW Realisation 1 Ltd (in liquidation), Ethel Austin Ltd, Secretary of State for Business, Innovation and Skills

(Case C-80/14)

(2014/C 151/13)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicants: Union of Shop, Distributive and Allied Workers (USDAW), Mrs B. Wilson

Defendants: WW Realisation 1 Ltd (in liquidation), Ethel Austin Ltd, Secretary of State for Business, Innovation and Skills

Questions referred

(1) (a) In Article l(l)(a)(ii) of Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies ([1]) ('the Directive'), does the phrase 'at least 20' refer to the number of dismissals across all of the employer's establishments in which dismissals are effected within a 90 day period, or does it refer to the number of dismissals in each individual establishment?

(b) If Article l(l)(a)(ii) refers to the number of dismissals in each individual establishment, what is the meaning of 'establishment'? In particular, should 'establishment' be construed to mean the whole of the relevant retail business, being a single economic business unit, or such part of that business as is contemplating making redundancies, rather than a unit to which a worker is assigned their duties, such as each individual store.

(2) In circumstances where an employee claims a protective award against a private employer, can the Member State rely on or plead the fact that the Directive does not give rise to directly effective rights against the employer in circumstances where:

(i) The private employer would, but for the failure by the Member State properly to implement the Directive, have been liable to pay a protective award to the employee, because of the failure of that employer to consult in accordance with the Directive; and

(ii) That employer being insolvent, in the event that a protective award is made against the private employer and is not satisfied by that employer, and an application is made to the Member State, that Member State would itself be liable to pay any such protective award to the employee under domestic legislation that implements Directive 2008/94/EC of 22 October 2008 on the protection of employees in the event of the insolvency of their employer ([2]), subject to any limitation of liability imposed on the Member State's guarantee institution pursuant to Article 4 of that Directive?

([1]) OJ L 225, p. 16
([2]) OJ L 283, p. 36

Request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven (Netherlands) lodged on 18 February 2014 — KPN BV v Autoriteit Consument en Markt (ACM), other parties: UPC Nederland BV and Others

(Case C-85/14)

(2014/C 151/14)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Appellant: KPN BV

Respondent: Autoriteit Consument en Markt (ACM)

Other parties: UPC Nederland BV, UPC Nederland Business BV, Tele2 Nederland BV, BT Nederland NV

Questions referred

1. Does Article 28 of the Universal Service Directive ([1]) permit the imposition of tariff regulation, without a market analysis having indicated that an operator has significant market power in regard to the regulated service, although the cross-border selectability of non-geographic telephone numbers is entirely possible from a technical point of view and the only obstacle to access to those numbers lies in the fact that the tariffs charged mean that a call to a nongeographic number is more expensive than a call to a geographic number?

2. If Question 1 is answered in the affirmative, the following two questions arise for the College van Beroep:

(a) Does the power to regulate tariffs also apply in the case where the effect of higher tariffs on the call volume to non-geographic numbers is merely limited?

(b) To what extent do the national courts still have scope to assess whether a tariff-related measure required under Article 28 of the Universal Service Directive is not unreasonably onerous for the transit provider, given the objectives which it seeks to attain?

3. Does Article 28(1) of the Universal Service Directive leave open the possibility that the measures referred to in that provision may be taken by an authority other than the national regulatory authority which exercises the powers referred to in Article 13(1) of the Access Directive, ([2]) with the result that the latter authority would merely have enforcement powers?

([1]) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (OJ 2002 L 108, p. 51).

([2]) Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (OJ 2002 L 108, p. 7).

Request for a preliminary ruling from the Juzgado de Primera Instancia de Miranda de Ebro (Spain) lodged on 24 February 2014 — Banco Grupo Cajatres, S.A. v D. Miguel Ángel Viana Gordejuela

(Case C-90/14)

(2014/C 151/15)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia de Miranda de Ebro

Parties to the main proceedings

Applicant: Banco Grupo Cajatres, S.A.

Defendants: María Mercedes Manjón Pinilla and joint heirs of D. Miguel Ángel Viana Gordejuela

Questions referred

1. Do Articles 6(1) and 7(1) of Council Directive 93/13/EEC ([1]) preclude a provision, such as the Second Transitional Provision of Law No 1/2013 of 14 May, which provides at all events for a reduction of the default interest rate, regardless of whether the term concerning default interest was originally void because it was unfair?

2. Do Articles 3(1), 4(1), 6(1) and 7(1) of Directive 93/13 preclude a provision of national law, such as Article 114 of the Law on Mortgages, which allows the national court, when assessing the unfairness of a term fixing default interest, to examine only whether the agreed interest rate exceeds 3 times the statutory interest rate and no other circumstances?

3. Do Articles 3(1), 4(1), 6(1) and 7(1) of Directive 93/13 preclude a provision of national law, such as Article 693 LEC, which allows a claim to be made for accelerated repayment of the total amount of the loan on the grounds of failure to pay three monthly instalments, without taking into account other factors such as the duration or amount of the loan or any other relevant matters and which also makes the possibility of avoiding the effects of such accelerated repayment dependent on the will of the creditor except in cases in which the mortgage is secured on the mortgagor's permanent residence?

([1]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts; OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Audiencia Provincial de Navarra (Spain) lodged on 26 February 2014 — Miguel Angel Zurbano Belaza, Antonia Artieda Soria v Banco Bilbao Vizcaya Argentaria, S.A.

(Case C-93/14)

(2014/C 151/16)

Language of the case: Spanish

Referring court

Audiencia Provincial de Navarra

Parties to the main proceedings

Appellants: Miguel Angel Zurbano Belaza and Antonia Artieda Soria

Other party: Banco Bilbao Vizcaya Argentaria, S.A.

Questions referred

1. If an action *in personam* is brought by a bank in 2009 to recover the sum that it considers is owed to it by its clients following the sale at auction of their mortgaged properties, is Directive 93/13/EEC ([1]) applicable for the purpose of examining the terms of a mortgage loan contracted in 1986, in view of the fact that the third auction (19 July 1993), the decisions of the court approving the quantification of the interest (3 July 2000) and definitively approving the order awarding the properties auctioned (18 July 2000) all post-date the publication of that directive?

2. If an action *in personam* is brought by a bank in 2009 to recover the sum that it considers is owed to it by its clients following the sale at auction of their mortgaged properties, must the national court interpret Article 10 of Law 26/1984 in the light of Directive 1993/13, in view of the fact that the third auction (19 July 1993), the decisions of the court approving the quantification of the interest (3 July 2000) and definitively approving the order awarding the properties auctioned (18 July 2000) all post-date the publication of that directive?

3. For the purposes of the exclusion provided for in Article 1(2) of Directive 93/13, does the mandatory nature of rule 12 of Article 131 of the Law on mortgages affect only the form of the procedures to be followed in respect of the third auction when a mortgage lender brings an action *in rem*, without preventing the national court, when the mortgage lender subsequently brings an action *in personam*, from considering whether the method of calculating the amount claimed is compatible with Community legislation?

4. Is it contrary to Community consumer protection legislation (Articles 3 and 5 of Directive 93/13) for a bank, after the mortgaged properties have been sold at auction and awarded at a 'derisory' price, to bring an action *in personam* against its clients and to use the 'derisory' price that was offered for the properties at the time of the auction in order to fix the amount of the debt claimed?

5. If an action *in personam* is brought by a bank in 2009 to recover the sum that it considers is owed to it by its clients following the sale at auction of their mortgaged properties, which were awarded to it at a 'derisory' price, does failure to take into consideration the legislative amendments introduced by Laws 1/2000 and 4/2011 constitute a breach of the general principle of equal treatment?

([1]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts; OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Juzgado de lo Social No 23 de Madrid (Spain) lodged on 11 March 2014 — Grima Janet Nisttahuz Poclava v José María Ariza Toledano (Taberna del Marqués)

(Case C-117/14)

(2014/C 151/17)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 23 de Madrid

Parties to the main proceedings

Applicant: Grima Janet Nisttahuz Poclava

Defendant: José María Ariza Toledano (Taberna del Marqués)

Questions referred

1. Is national legislation under which employment contracts of indefinite duration to support entrepreneurs are made subject to a probationary period of one year, during which the employee may freely be dismissed, contrary to EU law, and is it compatible with the fundamental right guaranteed by Article 30 ([1]) of the [Charter of Fundamental Rights of the European Union]?

2. Is the probationary period of one year to which employment contracts of indefinite duration to support entrepreneurs are made subject prejudicial to the objectives of, and to the rules laid down in, Directive 1999/70/EC ([2]) concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — clauses 1 and 3?

([1]) OJ 2000, C 364, p. 1.
([2]) OJ L 175, p. 43.

Request for a preliminary ruling from the Administrativen sad — Varna (Bulgaria) lodged on 14 March 2014 — Itales OOD v Direktor na Direktsia 'Obzhalvane i danacho-osiguritelna praktika' Varna pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite

(Case C-123/14)

(2014/C 151/18)

Language of the case: Bulgarian

Referring court

Administrativen sad — Varna

Parties to the main proceedings

Applicant: Itales OOD

Defendant: Direktor na Direktsia 'Obzhalvane i danacho-osiguritelna praktika' Varna pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite

Questions referred

1. Is Article 168 of Directive 2006/112/EC ([1]) of the Council and of the European Parliament of 28 November 2006 on the common system of value added tax to be interpreted so that, where goods are sold to a third party, a right to deduct input tax arises by virtue of their purchase, even if there is no proof that the previous supplier possessed goods of the same kind?

2. Is the administrative practice of the Natsionalna Agentsia po prihodite (National Income Tax Agency), according to which persons liable to VAT within the meaning of the Zakon za danan varhu dobaveneta stoynost (VAT law) are denied the right to deduct input tax in cases where there is no proof of the origin of the goods, without suspicion of involvement in tax fraud having being expressed and/or objective evidence provided by the tax authorities which would indicate that the taxable person knew, or ought to have known, that the transaction relied on as a basis for the right to deduct was connected with tax fraud?

([1]) OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Oberlandesgericht Nürnberg (Germany) lodged on 20 March 2014 — Criminal proceedings against Zoran Spasic

(Case C-129/14)

(2014/C 151/19)

Language of the case: German

Referring court

Oberlandesgericht Nürnberg

Party to the main proceedings

Zoran Spasic

Other party: Generalstaatsanwaltschaft Nürnberg

Questions referred

1. Is Article 54 of the Convention Implementing the Schengen Agreement (CISA) ([1]) compatible with Article 50 of the Charter of Fundamental Rights of the European Union, in so far as it subjects the application of the *ne bis in idem* principle to the condition that if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party?

2. Is the abovementioned condition in Article 54 of the Convention Implementing the Schengen Agreement also satisfied, if only one part (here: a fine) of two independent parts of the outstanding penalty imposed in the State which is the sentencing Contracting Party (here: a custodial sentence and a fine) has been enforced?

([1]) OJ 2000 L 239, p. 19.

GENERAL COURT

Judgment of the General Court of 27 March 2014 — Saint-Gobain Glass France and Others v Commission

(Cases T-56/09 and T-73/09) ([1])

(Competition — Agreements, decisions and concerted practices — European market in car glass — Decision finding an infringement of Article 81 EC — Market-sharing agreements and exchanges of commercially sensitive information — Regulation (EC) No 1/2003 — Plea of illegality — Fines — Retroactive application of the 2006 Guidelines on the method of setting fines — Value of sales — Repeated infringement — Additional amount — Imputability of the unlawful conduct — Upper limit of the fine — Consolidated turnover of the group)

(2014/C 151/20)

Language of the cases: French

Parties

Applicants: Saint-Gobain Glass France SA (Courbevoie, France); Saint-Gobain Sekurit Deutschland GmbH & Co. KG (Aachen, Germany); Saint-Gobain Sekurit France SAS (Thourotte, France) (represented: initially by B. van de Walle de Ghelcke, B. Meyring, E. Venot and M. Guillaumond, and subsequently by B. van de Walle de Ghelcke, B. Meyring and E. Venot, lawyers) (Case T-56/09); and Compagnie de Saint-Gobain SA (Courbevoie) (represented by: P. Hubert and E. Durand, lawyers) (Case T-73/09)

Defendant: European Commission (represented: initially by A. Bouquet, F. Castillo de la Torre, M. Kellerbauer and N. von Lingen, and subsequently by A. Bouquet, F. Castillo de la Torre, M. Kellerbauer and F. Ronkes Agerbeek, acting as Agents)

Intervener in support of the defendant: Council of the European Union (represented by: E. Karlsson and F. Florindo Gijón, acting as Agents)

Re:

Applications for the annulment of Commission Decision C (2008) 6815 final of 12 November 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (COMP/39.125 — Car glass), as amended by Commission Decision C (2009) 863 final of 11 February 2009, and by Decision C (2013) 1118 final of 28 February 2013, in so far as it concerns the applicants and, in the alternative, application for the annulment of Article 2 of that decision in so far is it imposes a fine on the applicants or, in the further alternative, applications for a reduction in the amount of that fine.

Operative part of the judgment

The Court:

1. *Joins Cases T-56/09 and T-73/09 for the purposes of the judgment;*

2. *Sets the amount of the fine imposed jointly and severally on Saint-Gobain Glass France SA, Saint-Gobain Sekurit Deutschland GmbH & Co. KG, Saint-Gobain Sekurit France SAS and Compagnie de Saint-Gobain SA in Article 2(b) of Commission Decision C (2008) 6815 final of 12 November 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (COMP/39.125 — Car glass), as amended by Commission Decision C (2009) 863 final of 11 February 2009, and by Decision C (2013) 1118 final of 28 February 2013, at EUR 715 million;*

3. *Dismisses the actions as to the remainder;*

4. *Orders each party to bear its own costs, with the exception of the Council of the European Union, the costs of which are to be borne by Saint-Gobain Glass France, Saint-Gobain Sekurit Deutschland and Saint-Gobain Sekurit France.*

([1]) OJ C 90, 18.4.2009.

Judgment of the General Court of 28 March 2014 — Italy v Commission

(Case T-117/10) ([1])

(ERDF — Reduction of financial assistance — 2000 - 2006 regional operational programme for the region of Apulia (Italy) covered by objective No 1 — Serious failings in the management or control systems which could lead to systemic irregularities — Partnership principle — Proportionality — Article 39(3)(b) of Regulation (EC) No 1260/1999 — Articles 4, 8, 9 and 10 of Regulation (EC) No 438/2001 — Duty to state reasons — Lack of competence)

(2014/C 151/21)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Palmieri, Agent, and by P. Gentili, avvocato dello Stato)

Defendant: European Commission (represented by: A. Steiblytė and D. Recchia, Agents)

Re:

Application to annul Commission Decision C (2009) 10350 final of 22 December 2009 reducing the financial assistance from the European Regional Development Fund allocated to the Italian Republic pursuant to Commission Decision C (2000) 2349 of 8 August 2000, approving the regional operational programme POR Puglia, in respect of the period 2000-2006, under objective No 1.

The Court:

1. *Dismisses the action;*

2. *Orders the Italian Republic to bear its own costs and to pay those incurred by the European Commission.*

([1]) OJ C 148, 5.6.2010.

Judgment of the General Court of 27 March 2014 — Intesa Sanpaolo v OHIM — equinet Bank (EQUITER)

(Case T-47/12) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark EQUITER — Earlier Community word mark EQUINET — Relative ground for refusal — Genuine use of the earlier mark — Article 42(2) of Regulation (EC) No 207/2009 — Obligation to state reasons)

(2014/C 151/22)

Language of the case: English

Parties

Applicant: Intesa Sanpaolo SpA (Turin (Italy)) (represented by: P. Pozzi, G. Ghisletti and F. Braga, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Bullock, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM: equinet Bank AG (Frankfurt am Main (Germany))

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 6 October 2011 (Case R 2101/2010-1), relating to opposition proceedings between equinet Bank AG and Intesa Sanpaolo 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 6 October 2011 (Case R 2101/2010-1);*

2. *Orders OHIM to bear its own costs and to pay those incurred by Intesa Sanpaolo SpA.*

([1]) OJ C 109, 14.4.12.

Judgment of the General Court of 2 April 2014 — Ben Ali v Council

(Case T-133/12) ([1])

(Common foreign and security policy — Restrictive measures taken against certain persons and entities in view of the situation in Tunisia — Freezing of funds — Legal basis — Right to property — Article 17(1) of the Charter of Fundamental Rights — Temporal adjustment of the effects of annulment — Non-contractual liability — Absence of material harm)

(2014/C 151/23)

Language of the case: French

Parties

Applicant: Mehdi Ben Tijani Ben Haj Hamda Ben Haj Hassen Ben Ali (Saint-Étienne-du-Rouvray, France) (represented by: A. de Saint Remy, lawyer)

Defendant: Council of the European Union (represented by: G. Étienne and S. Kyriakopoulou, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: É. Cujo and M. Konstantinidis, acting as Agents)

Re:

Application for (i) annulment of Council Decision 2012/50/CFSP of 27 January 2012 amending Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ 2012 L 27, p. 11), in so far as that decision concerns the applicant, and (ii) damages.

Operative part of the judgment

The Court:

1. *Annuls the annex to Council Decision 2011/72/CFSP of 31 January 2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia, as amended by Council Implementing Decision 2011/79/CFSP of 4 February 2011 implementing Decision 2011/72, insofar as that annex has been extended by Council Decision 2012/50/CFSP of 27 January 2012, amending Decision 2011/72, and insofar as it includes the name of Mr Mehdi Ben Tijani Ben Haj Hamda Ben Haj Hassen Ben Ali;*

2. *Declares that the effects of the annex to Decision 2011/72, as amended by Implementing Decision 2011/79 and extended by Decision 2012/50, with respect to Mr Ben Tijani Ben Haj Hamda Ben Haj Hassen Ben Ali shall be maintained until the expiry of the period for bringing an appeal against the present judgment or, if an appeal is lodged during that period, until such time as that appeal is dismissed;*

3. *Dismisses the remainder of the action;*

4. *Orders the Council of the European Union to bear, in addition to its own costs, the costs incurred by Mr Ben Tijani Ben Haj Hamda Ben Haj Hassen Ben Ali;*

5. *Orders the European Commission to bear its own costs.*

([1]) OJ C 165, 9.6.2012.

Judgment of the General Court of 27 March 2014 — Oracle America v OHIM — Aava Mobile (AAVA MOBILE)

(Case T-554/12) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark AAVA MOBILE — Earlier Community word mark JAVA — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — No likelihood of association — Link between the signs — Reputation — No similarity of the signs — Article 8(5) of Regulation No 207/2009)

(2014/C 151/24)

Language of the case: English

Parties

Applicant: Oracle America, Inc. (Wilmington, Delaware, United States) (represented by: M. Graf and T. Heydn, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by F. Mattina, and subsequently by P. Bullock, Agent)

Other party to the proceedings before the Board of Appeal of OHIM: Aava Mobile Oy (Oulu, Finland)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM (Case R 1205/2011-2) of 9 October 2012, concerning opposition proceedings between Oracle Amercia, Inc. and Aava Mobile Oy.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Oracle America, Inc. to pay the costs.*

([1]) OJ C 63, 2.3.2013.

Order of the General Court of 25 March 2014 — Hawe Hydraulik v OHIM — HaWi Energietechnik (HAWI)

(Case T-347/13) ([1])

(Community trade mark — Opposition — Withdrawal of the application for registration — No need to adjudicate)

(2014/C 151/25)

Language of the case: German

Parties

Applicant: Hawe Hydraulik SE (Munich, Germany) (represented by: G. Würtenberger and R. Kunze, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: HaWi Energietechnik AG (Eggenfelden, Germany)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 26 April 2013 (Case R 1690/2012-4), relating to opposition proceedings between Hawe Hydraulik SE and HaWi Energietechnik AG.

Operative part of the order

1. *There is no further need to adjudicate on the action.*

2. *The applicant is ordered to bear its own costs, and to pay the costs incurred by the defendant.*

([1]) OJ C 252, 31.8.2013.

Action brought on 31 December 2013 — Invivo v OLAF

(Case T-690/13)

(2014/C 151/26)

Language of the case: English

Parties

Applicant: Invivo Ltd (Abinsk, Russia) (represented by: T. Huopalainen, lawyer)

Defendant: European Anti-Fraud Office (OLAF)

Form of order sought

The applicant claim that the Court should:

— Review the legality of a failure to act on the part of the defendant in case OF/2013/0902 after it has been called upon to act by the applicant;

— Order the defendant to act.

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law, alleging failure to act based on Article 265 TFEU, as the financial interests of the EU are involved within the meaning of Article 1 of Regulation (EC) No 1073/1999 ([1]) when the national agency that grants the aid receives most of its funds from the EU and where on the alleged abuser side legal entities from at least two member states are involved.

([1]) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ 1999 L 136, p. 1)

Action brought on 10 February 2014 — Schniga v CPVO — Brookfield New Zealand (Gala Schnitzer)

(Case T-91/14)

(2014/C 151/27)

Language in which the application was lodged: English

Parties

Applicant: Schniga GmbH (Bolzano, Italy) (represented by: G. Würtenberger and R. Kunze, lawyers)

Defendant: Community Plant Variety Office (CPVO)

Other party to the proceedings before the Board of Appeal: Brookfield New Zealand Ltd (Havelock North, New Zealand)

Form of order sought

The applicant claims that the Court should:

— Annul the decision dated 20 September 2013 of the Board of Appeal of the Community Plant Variety Office in Case A 004/2007;

— Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community plant variety right: The applicant

Community plant variety right concerned: Gala Schnitzer — Community Plant Variety Right No. EU 18759

Decision of the Committee of the CPVO: Upheld the Community plant variety right

Decision of the Board of Appeal: Found the appeal well founded and annulled the contested decision

Pleas in law: Infringement of Articles 61 (1) (b), 55 (4), 59 (3) and 62 of the Council Regulation No. 2100/94.

Action brought on 10 February 2014 — Schniga v CPVO — Elaris (Gala Schnitzer)

(Case T-92/14)

(2014/C 151/28)

Language in which the application was lodged: English

Parties

Applicant: Schniga GmbH (Bolzano, Italy) (represented by: G. Würtenberger and R. Kunze, lawyers)

Defendant: Community Plant Variety Office (CPVO)

Other party to the proceedings before the Board of Appeal: Elaris SNC (Angers, France)

Form of order sought

The applicant claims that the Court should:

— Annul the decision dated 20 September 2013 of the Board of Appeal of the Community Plant Variety Office in Case A 003/2007;

— Order the defendant to pay the costs of proceedings.

Pleas in law and main arguments

Applicant for a Community plant variety right: The applicant

Community plant variety right concerned: Gala Schnitzer — Community Plant Variety Right No. EU 18759

Decision of the Committee of the CPVO: Upheld the Community plant variety right

Decision of the Board of Appeal: Found the appeal well founded and annulled the contested decision

Pleas in law: Infringement of Articles 61 (1) (b), 55 (4), 59 (3) and 62 of the Council Regulation No. 2100/94.

Appeal brought on 17 February 2014 by the European Commission against the judgment of the Civil Service Tribunal of 11 December 2013 in Case F-130/11, Verile and Gjergji v Commission

(Case T-104/14 P)

(2014/C 151/29)

Language of the case: French

Parties

Appellant: European Commission (represented by: J. Currall, D. Martin and G. Gattinara, acting as Agents)

Other parties to the proceedings: Marco Verile (Cadrezzate, Italy) and Anduela Gjergji (Brussels, Belgium)

Form of order sought by the appellant

The appellant claims that the Court should:

— set aside the judgment of the Civil Service Tribunal of 11 December 2013 in Case F-130/11 *Verile and Gjergji* v *Commission*;

— declare that each of the parties should bear its own costs in relation to the present proceedings;

— order Mr Verile and Ms Gjergji to pay the costs incurred in the proceedings before the Civil Service Tribunal.

Grounds of appeal and main arguments

The appellant relies on four grounds of appeal.

1. First ground of appeal, alleging a misapplication of the concept of a measure having adverse effects in that the Civil Service Tribunal held that the action at first instance was admissible, characterising the proposal made by the Commission to the interested parties concerning the number of years of pensionable service to be credited in the context of the transfer of their pension rights under Article 11(2) of Annex VIII of the Staff Regulations of Officials of the European Union as a measure having adverse effects (relating to paragraphs 37 to 55 of the judgment under appeal).

2. Second ground of appeal, alleging that the Civil Service Tribunal unlawfully raised of its own motion the plea of illegality in respect of the general implementing provisions concerning the transfer of pension rights adopted in 2011. The Commission claims that the plea was not expressly raised by the applicants at first instance and, moreover, was not the subject of an exchange of arguments (relating to paragraphs 72 and 73 of the judgment under appeal).

3. Third ground of appeal, alleging that the Civil Service Tribunal erred in law in the interpretation of Article 11 of Annexe VIII of the Staff Regulations of Officials of the European Union and of the provisions relating to the transfer of pension rights (relating to paragraphs 74 to 98, 106, 109 and 110 of the judgment under appeal). The Commission claims that, since the concept of '[updated] capital value' referred to in Article 11(2) of Annex VIII is different from the concept of 'actuarial equivalent' referred to in Article 11(1) and defined in Article 8 of Annex VIII, the Civil Service Tribunal limited itself to a literal interpretation in coming to conclusions liable to give rise to significant inequalities between officials requesting an inward transfer of their pension rights and those requesting an outward transfer. The Commission maintains that the Civil Service Tribunal's interpretation is incompatible with both the need to maintain a financial equilibrium in the European Union pension scheme and the property rights of officials requesting an inward transfer.

4. Fourth ground of appeal, alleging that the Civil Service Tribunal erred in law in holding that the rights of the applicants at first instance in relation to the transfer of their rights were already 'fully constituted' at the time of the entry into force of the general implementing provisions concerning the transfer of pension rights adopted in 2011, since only the final decision on the number of years of pensionable service to be credited would establish the transferred pension rights (relating to paragraphs 99 to 108 of the judgment under appeal).

Action brought on 17 February 2014 — Cargill v Council

(Case T-117/14)

(2014/C 151/30)

Language of the case: English

Parties

Applicant: Cargil SACI (Buenos Aires, Argentina) (represented by: J. Bellis and R. Luff, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 315, p. 2), insofar as it concerns the applicant; and

— Order the defendant to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Institutions have committed a manifest error in the appreciation of the facts by concluding that there was a distortion of the prices of soya beans and soybean oil justifying the application of the second paragraph of Article 2(5) of the Basic Anti-dumping Regulation ([1]).

2. Second plea in law, alleging that the second paragraph of Article 2(5) of the Basic Antidumping Regulation, as construed by the Institutions in the present case, may not be applied to imports from a WTO member as it is inconsistent with the WTO Anti-dumping Agreement.

3. Third plea in law, alleging that the injury assessment fails to take into consideration factors that break the causal link between the alleged injury and the allegedly dumped imports in violation of Article 3(7) of the Basic-Anti-dumping Regulation.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51)

Action brought on 17 February 2014 — LDC Argentina v Council

(Case T-118/14)

(2014/C 151/31)

Language of the case: English

Parties

Applicant: LDC Argentina SA (Buenos Aires, Argentina) (represented by: J. Bellis and R. Luff, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 315, p. 2), insofar as it concerns the applicant; and

— Order the defendant to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Institutions have committed a manifest error in the appreciation of the facts by concluding that there was a distortion of the prices of soya beans and soybean oil justifying the application of the second paragraph of Article 2(5) of the Basic Anti-dumping Regulation ([1]).

2. Second plea in law, alleging that the second paragraph of Article 2(5) of the Basic Antidumping Regulation, as construed by the Institutions in the present case, may not be applied to imports from a WTO member as it is inconsistent with the WTO Anti-dumping Agreement.

3. Third plea in law, alleging that the injury assessment fails to take into consideration factors that break the causal link between the alleged injury and the allegedly dumped imports in violation of Article 3(7) of the Basic-Anti-dumping Regulation.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51)

Action brought on 18 February 2014 — Carbio v Council

(Case T-119/14)

(2014/C 151/32)

Language of the case: English

Parties

Applicant: Cámara Argentina de Biocombustibles (Carbio) (Buenos Aires, Argentina) (represented by: J. Bellis and R. Luff, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 315, p. 2), insofar as it concerns the applicant; and

— Order the defendant to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Institutions have committed a manifest error in the appreciation of the facts by concluding that there was a distortion of the prices of soya beans and soybean oil justifying the application of the second paragraph of Article 2(5) of the Basic Anti-dumping Regulation ([1]).

2. Second plea in law, alleging that the second paragraph of Article 2(5) of the Basic Antidumping Regulation, as construed by the Institutions in the present case, may not be applied to imports from a WTO member as it is inconsistent with the WTO Anti-dumping Agreement.

3. Third plea in law, alleging that the injury assessment fails to take into consideration factors that break the causal link between the alleged injury and the allegedly dumped imports in violation of Article 3(7) of the Basic-Anti-dumping Regulation.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51)

Action brought on 21 February 2014 — Daimler v Commission

(Case T-128/14)

(2014/C 151/33)

Language of the case: German

Parties

Applicant: Daimler AG (Stuttgart, Germany) (represented by: C. Arhold, B. Schirmer and N. Wimmer, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 13 December 2013 — SG.B.5/MF/rc — sg.dsg1.b.5(2013) 3963453 — GESTDEM 2013/4643;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant contests the Commission's decision on the applicant's confirmatory application for access to documents relating to the procedure under Article 29 of Directive 2007/46/EC ([1]) in connection with the refusal of the French Republic to register certain vehicles of the applicant.

The applicant relies on the following in support of its action:

1. Infringement of the right of access to the file

   — The applicant submits in this regard that the Commission erroneously denied it a right of access to its file under Article 41(2)(b) of the Charter of Fundamental Rights of the European Union. It submits that it is directly and individually concerned by the procedure under Article 29 of Directive 2007/46. As such, it is entitled to a right of access to the file relating to it as a necessary condition for the effective exercise of its fundamental right to be heard.

2. Infringement of the applicant's rights under the Aarhus Convention ([2])

   — The applicant claims in this regard that there has been an infringement of the Aarhus Convention in conjunction with Regulation (EC) No 1367/2006. ([3]) The documents the access to which is sought by the applicant concern environmental information. For legal and factual reasons, there cannot be a refusal on grounds of the protection of ongoing investigations. In particular, the requirements of the Aarhus Convention preclude a refusal.

3. Infringement of the right of access to documents under Article 42 of the Charter of Fundamental Rights of the European Union, Article 15(3) TFEU and under Regulation (EC) No 1049/2001 ([4])

   — The applicant submits that the contested decision infringes Article 2(1) of Regulation No 1049/2001 and thereby Article 15(3) TFEU and Article 42 of the Charter of Fundamental Rights of the European Union because the applicant has a right of access to the documents sought by it and that there are no exclusion grounds for refusal of access.

   — The applicant submits in this regard that, contrary to its duty, the Commission refrained from carrying out an individual and specific assessment of the documents sought and erroneously based its decision on a general exception. Furthermore, there is an overriding public interest in disclosure of the documents. Contrary to its duty, the Commission failed to recognise that fact. The Commission failed to carry out the necessary assessment under Article 4 of Regulation No 1049/2001 and made a blanket reference to protection of the purpose of investigations.

4. Infringement of the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union

   — The applicant submits in this regard that the Commission did not give reasons for its decision in a manner which satisfies the requirements of the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union.

([1]) Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ 2007 L 263, p. 1).

([2]) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed in Aarhus on 25 June 1998.

([3]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

([4]) 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 (OJ 2001 L 145, p. 43).

Action brought on 19 February 2014 — PT Wilmar Bioenergi Indonesia and PT Wilmar Nabati Indonesia v Council

(Case T-139/14)

(2014/C 151/34)

Language of the case: English

Parties

Applicants: PT Wilmar Bioenergi Indonesia (Kodya Dumai, Indonesia); and PT Wilmar Nabati Indonesia (Medan, Indonesia) (represented by: P. Vander Schueren, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

— Annul Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 315, p. 2), insofar as it imposes an anti-dumping duty on the applicants; and

— Order the defendant to pay the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the EU Institutions acted contrary to the basic Regulation ([1]) because costs were not calculated on the basis of the records kept by the producer-exporters for the product under investigation and producers under investigation.

2. Second plea in law, alleging violation of the basic Regulation as the constructed normal value includes costs not associated with the production and sale of the product under consideration.

3. Third plea in law, alleging that the EU Commission acted contrary to the basic Regulation by incorporating costs based on international reference prices rather than costs in the country of origin (Indonesia).

4. Fourth plea in law, alleging violations of the basic Regulation resorting to the construction of normal value in the absence of a particular market situation for the product concerned.

5. Fifth plea in law claiming the inapplicability of Article 2(5) of the basic Regulation for being incompatible with Article 2.2.2(1) of the WTO Anti-Dumping Agreement if Article 2(5) allowed an exception to the obligation to use the cost of production in the country of origin in the construction of normal value.

6. Sixth plea in law, alleging that Council Regulation No 1194/2013 is tainted by a manifest error of assessment in law and in fact as the actual price paid by the biodiesel producers for crude palm oil (CPO) is not regulated by government such that the actual price paid can be rejected.

7. Seventh plea in law, alleging that Council Regulation No 1194/2013 violates the basic Regulation in the absence of due allowance for differences affecting price comparability, no fair comparison was made between normal value and export price.

8. Eighth plea in law, alleging manifest error of assessment in the application of the cost adjustment which used the wrong feedstock in the case of the applicants.

9. Ninth plea in law, alleging that Council Regulation No 1194/2013 is tainted by a manifest error of assessment by adjusting the cost of CPO sourced from affiliated CPO producers for not being at arm's length without examination solely on the basis of the alleged impact of the export tax on CPO prices.

10. Tenth plea in law, alleging that Council Regulation No 1194/2013 is based on a manifest error of assessment by (i) rejecting the use of the domestic profit margin of sales of products part of the same general category as biodiesel on the basis that these sales were not made in the ordinary course of trade (ii) assessing the reasonableness of a profit margin based on a long-term interest rather than at short-term or medium term interest rate on loans.

11. Eleventh plea in law, alleging that Council Regulation No 1194/2013 is based on a manifest error of assessment by rejecting the determination of a reasonable profit margin based on the claim that the use of return on capital for this determination is irrelevant for trading companies because they are service businesses without significant capital investments which erroneously denies the need for trading companies to have working capital to exercise their trading activities.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51) referred to as 'the basic Regulation'

Action brought on 17 March 2014 — Ferring v OHIM — Kora Corporation (Koragel)

(Case T-169/14)

(2014/C 151/35)

Language in which the application was lodged: English

Parties

Applicant: Ferring BV (Hoofddorp, Netherlands) (represented by: A. Thünken, lawyer)

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

Other party to the proceedings before the Board of Appeal: Kora Corporation Ltd (Swords, Ireland)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 January 2014 given in Case R 721/2013-4;

— Order the defendant and the intervener, should it intervene, to pay the costs of proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The word mark 'Koragel' for goods in Class 5 –Community trade mark application No 10 490 027

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: The word mark 'CHORAGON' for goods in Class 5 — Community trade mark registration No 8 695 314

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8 (1)(b) CTMR.

Action brought on 20 March 2014 — Léon Van Parys v Commission

(Case T-171/14)

(2014/C 151/36)

Language of the case: Dutch

Parties

Applicant: Firma Léon Van Parys NV (Antwerp, Belgium) (represented by: P. Vlaemminck, B. Van Vooren and R. Verbeke, lawyers)

Defendant: European Commission

Form of order sought

— Annul the letter from the Commission of 24 January 2014 informing the applicant of the suspension of the time-limit for dealing with the case pursuant to Article 907 of Regulation (EEC) No 2454/93;

— declare that Article 909 of Regulation (EEC) No 2454/93 applies fully and to the applicant's advantage following the judgment of the General Court of 19 March 2013 in Case T-324/10 (Ref: REM/REC 07/07);

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an infringement of Articles 907 and 909 of Regulation No 2454/93 ([1]) and of the Charter of Fundamental Rights of the European Union, in particular Article 41 thereof concerning the right to good administration.

   — By the judgment of the General Court of 19 March 2013 in Case T-324/10 *Firma Léon Van Parys* v *Commission*, Commission Decision C(2010) 2858 was annulled *ex tunc*; the nine-month time-limit for dealing with the case having already expired, the Commission had therefore ceased to be in a position to decide on the application for remission.

   — At the very least, the Commission has exceeded its powers in so far as its actions go beyond what is required in order to bring its — partly annulled — decision in line with the General Court's judgment of 19 March 2013 in Case T-324/10. The Commission has thereby infringed the first paragraph of Article 266 TFEU in relation to its power to take measures to comply with judgments of the Court.

2. Second plea in law, alleging an infringement of Article 907 of Regulation No 2454/93 and of the Charter of Fundamental Rights of the European Union, in particular Article 41 concerning the right to a fair hearing, in that the Commission has unlawfully availed itself of the opportunity to seek information in accordance with Article 907 of Regulation No 2454/93, in order to preclude or at least to delay any future application of Article 909 of Regulation No 2454/93.

([1]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

Action brought on 20 March 2014 — Nürburgring v OHIM — Biedermann (Nordschleife)

(Case T-181/14)

(2014/C 151/37)

Language in which the application was lodged: German

Parties

Applicant: Nürburgring GmbH (Nürburg, Germany) (represented by: M. Viefhues and C. Giersdorf, lawyers)

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

Other party to the proceedings before the Board of Appeal: Lutz Biedermann (Villingen-Schwenningen, Germany)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 January 2014 in Case R 163/2013-4;

— order the defendant and, if applicable, the other interested parties to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Word mark 'Nordschleife' for goods and services in Classes 2 to 4, 6, 9, 11, 12, 14, 16, 18, 21, 22, 24 to 30, 32 to 34, 39, 41 and 43 — Community trade mark application No 7 379 399

Proprietor of the mark or sign cited in the opposition proceedings: Lutz Biedermann

Mark or sign cited in opposition: National word mark 'Management by Nordschleife' for goods and services in Classes 6, 9, 16, 25, 28 and 41

Decision of the Opposition Division: Opposition upheld in part

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009

Action brought on 20 March 2014 — Sonova Holding v OHIM (Flex)

(Case T-187/14)

(2014/C 151/38)

Language of the case: English

Parties

Applicant: Sonova Holding AG (Stäfa, Switzerland) (represented by: C. Hawkes, Solicitor)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 December 2013 given in Case R 357/2013-2.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'Flex' for goods in Class 10 — Community trade mark application No 10 866 887

Decision of the Examiner: Found the trade mark applied for not eligible for registration

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 7(1)(b) and (c) and 7(2) CTMR.

Action brought on 20 March 2014 — Grundig Multimedia v OHIM (GentleCare)

(Case T-188/14)

(2014/C 151/39)

Language of the case: English

Parties

Applicant: Grundig Multimedia AG (Stansstad, Switzerland) (represented by: M. Neuner and S. Walter, lawyers)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 24 January 2014 given in Case R 739/2013-5.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'GentleCare' for goods in Class 7 — Community trade mark application No 11 102 522

Decision of the Examiner: Rejected the CTM application in part

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 7(1)(b), (c) and 7(2) CTMR.

Action brought on 21 March 2014 — Lubrizol France v Council

(Case T-191/14)

(2014/C 151/40)

Language of the case: English

Parties

Applicant: Lubrizol France SAS (Rouen, France) (represented by: R. MacLean, Solicitor and B. Hartnett, Barrister)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Declare the appeal admissible;

— Annul Articles 1 and 4 of the Council Regulation (EU) 1387/2013 ([1]) of 17th December 2013 suspending the autonomous Common Customs Tariff duties on certain agricultural and industrial products and repealing Council Regulation (EU) 1344/20111 to the extent that it deprived the applicant of its rights to the entitlement of the benefit of three duty suspensions under former TARIC Codes 2918.2900.80, 3811.2900.10 and 3811.9000.30 on the grounds that it contains manifest errors in law and substance and was also adopted in breach of essential procedural requirements and safeguards;

— Order the defendant and any interveners to pay the applicant's legal costs and expenses of the procedure.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant committed manifest errors in law and substance when determining that the applicable conditions were satisfied for terminating the three autonomous duty suspensions by failing to properly apply the test for establishing the existence of sufficient quantities of similar or substitutable quantities of products made in the European Union as well as the criterion of identical, equivalent or substitute products.

2. Second plea in law, alleging that that the defendant breached essential procedural requirements and safeguards put in place to ensure that the procedural rules, requiring opposing companies to reply within due time and also to prevent misleading and inaccurate information being provided in objections to the continuation of autonomous duty suspension, are properly applied and implemented.

([1]) Council Regulation (EU) No 1387/2013 of 17 December 2013 suspending the autonomous Common Customs Tariff duties on certain agricultural and industrial products and repealing Regulation (EU) No 1344/2011 (OJ 2013 L 354, p. 201)

Action brought on 21 March 2014 — Cristiano di Thiene v OHIM — Nautica Apparel (AERONAUTICA)

(Case T-193/14)

(2014/C 151/41)

Language in which the application was lodged: English

Parties

Applicant: Cristiano di Thiene SpA (Thiene, Italy) (represented by: F. Fischetti and F. Celluprica, lawyers)

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

Other party to the proceedings before the Board of Appeal: Nautica Apparel, Inc. (New York, United States)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 January 2014 given in Case R 96/2013-4.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'AERONAUTICA' for goods in services in Classes 9, 18, 20, 25, 35, 42 and 43 — Community trade mark application No 7 508 237

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Several earlier Community and UK trade mark registrations of the word marks 'NAUTICA' and 'NAUTICA BLUE' for goods and services in Classes 8, 9, 18, 20, 25, 27 and 35

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) CTMR.

Action brought on 20 March 2014 — Bristol Global v OHIM — Bridgestone (AEROSTONE)

(Case T-194/14)

(2014/C 151/42)

Language in which the application was lodged: English

Parties

Applicant: Bristol Global Co. Ltd (Birmingham, United Kingdom) (represented by: F. Bozhinova, lawyer)

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

Other party to the proceedings before the Board of Appeal: Bridgestone Corp. (Tokyo, Japan)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 December 2013 given in Case R 916/2013-2.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative trade mark containing the verbal element 'AEROSTONE' for goods in Class 12 — Community trade mark application No 10 066 736

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Community trademarks registrations of the word marks 'STONE' for goods in Classes 12, 28, 35 and 37 and 'BRIDGESTONE' for goods in Class 12; well-known trade mark and non-registered sign containing verbal element 'BRIDGESTONE'

Decision of the Opposition Division: Partly upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 8(1)(b), 8(4) and 8(5) CTMR.

Action brought on 24 March 2014 — Swedish Match North Europe v OHIM — Skruf Snus (Oral snuff packages)

(Case T-196/14)

(2014/C 151/43)

Language in which the application was lodged: English

Parties

Applicant: Swedish Match North Europe AB (Stockholm, Sweden) (represented by: H. Wistam and L. Holm, lawyers)

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

Other party to the proceedings before the Board of Appeal: Skruf Snus AB (Stockholm, Sweden)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 December 2013 given in Case R 1803/2012-3;

— Order the defendant to pay the costs of proceedings.

Pleas in law and main arguments

Registered Community design in respect of which a declaration of invalidity has been sought: A design for the product 'oral snuff packages' — registered under No 1265805-0010

Proprietor of the Community design: The other party to the proceeding

Applicant for the declaration of invalidity of the Community design: The applicant

Grounds for the application for a declaration of invalidity: It was alleged that the design lacked an individual character

Decision of the Cancellation Division: Upheld the application for a declaration of invalidity of the contested RCD

Decision of the Board of Appeal: Annulled the contested decision and dismissed the application for a declaration of invalidity

Pleas in law: Infringement of Article 6 CDR.

Action brought on 31 March 2014 — Bopp v OHIM (Representation of an octagonal green frame)

(Case T-209/14)

(2014/C 151/44)

Language of the case: German

Parties

Applicant: Carsten Bopp (Glashütten, Germany) (represented by C. Russ, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 January 2014 in Case R 1276/2013-1

Pleas in law and main arguments

Community trade mark concerned: the figurative mark representing an octagonal green frame for services in Class 35 — application No 8 248 965

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law:

— Infringement of Article 65(6) of Regulation No 207/2009

— Infringement of Article 7(1)(b) of Regulation No 207/2009

Order of the General Court of 25 March 2014 — Netherlands v Commission

(Case T-542/13) ([1])

(2014/C 151/45)

Language of the case: Dutch

The President of the First Chamber has ordered that the case be removed from the register.

([1]) OJ C 344, 23.11.13.

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