Official Journal of the European Union

C 129

English edition

Information and Notices

Volume 60

24 April 2017

Contents

IV *Notices*

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

Court of Justice of the European Union

V *Announcements*

COURT PROCEEDINGS

Court of Justice

EN

General Court

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2017/C 129/01)

Last publication

OJ C 121, 18.4.2017

Past publications

OJ C 112, 10.4.2017

OJ C 104, 3.4.2017

OJ C 95, 27.3.2017

OJ C 86, 20.3.2017

OJ C 78, 13.3.2017

OJ C 70, 6.3.2017

These texts are available on:

EUR-Lex: http://eur-lex.europa.eu

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Order of the Court (Tenth Chamber) of 1 February 2017 — Ante Šumelj and Others v European Commission

(Case C-239/16 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — Action for damages — Act of accession of the Republic of Croatia to the European Union — Commitments relating to a strategy for judicial reform — Creation followed by the abolition of the position of public bailiff — Damage suffered by persons appointed as public bailiffs — Monitoring of the Republic of Croatia's commitments by the European Commission — Appeal dismissed — Appeal manifestly inadmissible in part and manifestly unfounded in part)

(2017/C 129/02)

Language of the case: Croatian

Parties

Appellants: Ante Šumelj, Dubravka Bašljan, Đurđica Crnčević, Miroslav Lovreković, Drago Burazer, Nikolina Nežić, Blaženka Bošnjak, Bosiljka Grbašić, Tea Tončić, Milica Bjelić, Marijana Kruhoberec, Davor Škugor, Ivan Gerometa, Kristina Samardžić, Sandra Cindrić, Sunčica Gložinić, Tomislav Polić, Vlatka Pižeta (represented by: M. Krmek, odvjetnik)

Other party to the proceedings: European Commission (represented by: S. Ječmenica and G. Wils, acting as Agents)

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Ante Šumelj, Ms Dubravka Bašljan, Ms Đurđica Crnčević, Mr Miroslav Lovreković, Mr Drago Burazer, Ms Nikolina Nežić, Ms Blaženka Bošnjak, Ms Bosiljka Grbašić, Ms Tea Tončić, Ms Milica Bjelić, Ms Marijana Kruhoberec, Mr Davor Škugor, Mr Ivan Gerometa, Ms Kristina Samardžić, Ms Sandra Cindrić, Ms Sunčica Gložinić, Mr Tomislav Polić and Ms Vlatka Pižeta are ordered to pay the costs.*

([1]) OJ C 251, 11.7.2016.

Order of the Court (Tenth Chamber) of 1 February 2017 — Vedran Vidmar and Others v European Commission

(Case C-240/16 P) [1]

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — Action for damages — Act of accession of the Republic of Croatia to the European Union — Commitments relating to a strategy for judicial reform — Creation followed by the abolition of the position of public bailiff — Damage suffered by persons appointed as public bailiffs — Monitoring of the Republic of Croatia's commitments by the European Commission — Appeal dismissed — Appeal manifestly inadmissible)

(2017/C 129/03)

Language of the case: Croatian

Parties

Appellants: Vedran Vidmar, Saša Čaldarević, Irena Glogovšek, Gordana Grancarić, Martina Grgec, Ines Grubišić, Sunčica Horvat Peris, Zlatko Ilak, Mirjana Jelavić, Romuald Kantoci, Svjetlana Klobučar, Ivan Kobaš, Tihana Kušeta Šerić, Damir Lemaić, Željko Ljubičić, Gordana Mahovac, Martina Majcen, Višnja Merdžo, Tomislav Perić, Darko Radić, Damjan Saridžić (represented by: D. Graf, odvjetnik)

Other party to the proceedings: European Commission (represented by: S. Ječmenica and G. Wils, acting as Agents)

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Vedran Vidmar, Mr Saša Čaldarević, Ms Irena Glogovšek, Ms Gordana Grancarić, Ms Martina Grgec, Ms Ines Grubišić, Ms Sunčica Horvat Peris, Mr Zlatko Ilak, Ms Mirjana Jelavić, Mr Romuald Kantoci, Ms Svjetlana Klobučar, Mr Ivan Kobaš, Ms Tihana Ms Kušeta Šerić, Mr Damir Lemaić, Mr Željko Ljubičić, Ms Gordana Mahovac, Ms Martina Majcen, Ms Višnja Merdžo, Mr Tomislav Perić, Mr Darko Radić and Mr Damjan Saridžić are ordered to pay the costs.*

(1) OJ C 251, 11.7.2016.

Order of the Court (Tenth Chamber) of 1 February 2017 — Darko Graf v European Commission

(Case C-241/16 P) [1]

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — Action for damages — Act of accession of the Republic of Croatia to the European Union — Commitments relating to a strategy for judicial reform — Creation followed by the abolition of the position of public bailiff — Damage suffered by persons appointed as public bailiffs — Monitoring of the Republic of Croatia's commitments by the European Commission — Appeal dismissed — Appeal manifestly inadmissible)

(2017/C 129/04)

Language of the case: Croatian

Parties

Appellant: Darko Graf (represented by: L. Duvnjak, odvjetnik)

Other party to the proceedings: European Commission (represented by: S. Ječmenica and G. Wils, acting as Agents)

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Darko Graf is ordered to pay the costs.*

(1) OJ C 251, 11.7.2016.

Order of the Court (Tenth Chamber) of 9 February 2017 (request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo No 8 de Madrid — Spain) — Francisco Rodrigo Sanz v Universidad Politécnica de Madrid

(Case C-443/16) (1)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4 — Successive fixed-term contracts in the public sector — Restructuring the organisation of universities — National rules — Integration of college lecturers into the body of university lecturers — Condition — Attainment of a doctorate degree — Changing full-time posts into part-time posts — Applied only to teachers employed as interim civil servants — Principle of non-discrimination)

(2017/C 129/05)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo No 8 de Madrid

Parties to the main proceedings

Applicant: Francisco Rodrigo Sanz

Defendant: Universidad Politécnica de Madrid

Operative part of the order

Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, in the context of measures restructuring the organisation of universities, authorises the competent authorities of the Member State concerned to reduce by half the working hours of college lecturers employed as interim civil servants on account of them not having a doctorate degree, whereas university lecturers employed as permanent civil servants who also do not have a doctorate degree are not subject to the same measure.

(1) OJ C 410, 7.11.2016.

Order of the Court (Ninth Chamber) of 7 February 2017 — Kohrener Landmolkerei GmbH, DHG Deutsche Heumilchgesellschaft mbH v European Commission

(Case C-446/16 P) [1]

(Appeal — Regulation (EU) No 1151/2012 — Quality schemes for agricultural products and foodstuffs — Traditional specialities guaranteed — Late lodging of opposition measure by the competent national authorities — Article 181 of the Rules of Procedure of the Court — Appeal manifestly unfounded)

(2017/C 129/06)

Language of the case: German

Parties

Applicants: Kohrener Landmolkerei GmbH, DHG Deutsche Heumilchgesellschaft mbH (represented by: A Wagner, Rechtanwalt)

Other party to the proceedings: European Commission (represented by: G. von Rintelen and A. Lewis, acting as Agents)

The operative part of the judgment

The Court:

1. *Dismisses the appeal.*

2. *Orders Kohrener Landmolkerei GmbH and DHG Deutsche Heumilchgesellschaft mbH to bear their own costs and pay those incurred by the European Commission.*

---

(1) OJ C 410, 7.11.2016.

Request for a preliminary ruling from the Supremo Tribunal de Justiça (Portugal) lodged on 9 February 2017 — David Vicente Fernandes v Gabinete Português de Carta Verde

(Case C-71/17)

(2017/C 129/07)

Language of the case: Portuguese

Referring court

Supremo Tribunal de Justiça

Parties to the main proceedings

Applicant: David Vicente Fernandes

Defendant: Gabinete Português de Carta Verde

Questions referred

A. Does insurance taken out in Luxembourg produce legal effects in Portugal in the same way as if the corresponding policy had been issued in Portugal?

B. Is the Gabinete Português de Carta Verde the compensation body referred to in Article 24(1) of Directive 2009/103/EC [1] and, as the body responsible for compensating the injured parties in the cases referred to in Article 20(1) of the Directive, is it accountable in the same way as the Luxembourg insurance company?

C. In the present case, is it sufficient to sue the compensation body or is it also necessary to sue the insurance company? In the latter case, can the insurance company be sued at its headquarters in Luxembourg or must the action be brought against its representative in Portugal?

D. In the event that the insurance company does not have a representative in Portugal, who should be sued so that full compensation is paid, where there is an unlimited civil liability insurance policy?

(1) Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability — OJ 2009 L 263, p. 11.

Appeal brought on 14 February 2017 by TestBioTech eV, European Network of Scientists for Social and Environmental Responsibility eV, Sambucus eV against the judgment of the General Court (Fifth Chamber) delivered on 15 December 2016 in Case T-177/13: TestBioTech eV, European Network of Scientists for Social and Environmental Responsibility eV, Sambucus eV v Commission

(Case C-82/17 P)

(2017/C 129/08)

Language of the case: English

Parties

Appellants: TestBioTech eV, European Network of Scientists for Social and Environmental Responsibility eV, Sambucus eV (represented by: K. Smith QC, J. Stevenson, Barrister)

Other parties to the proceedings: European Commission, United Kingdom of Great Britain and Northern Ireland, European Food Safety Authority, Monsanto Europe, Monsanto Company

Form of order sought

The Appellants claim that the Court should:

— annul paragraphs (1) and (2) of the Court order;

— re-make the judgment granting the annulment of the Commission decisions in the manner sought before the General Court or, in the alternative, remit the case back to the General Court for a full re-hearing. The decision on this issue turns on which ground(s) of appeal are successful;

— order the Commission to pay the Appellants' costs; and

— order any other measure deemed appropriate.

Pleas in law and main arguments

The Appellants invite the Court to set aside or annul the judgment of the General Court of the European Union of 15 December 2016, Testbiotech and Others v Commission (T-177/13, ECLI:EU:T:2016:736) ('the Judgment') served on the Appellants on 19 December 2016. In the Judgment, the General Court dismissed the Appellants' action seeking the annulment of the European Commission's three substantively identical decisions addressed to the Appellants. Those decisions determined, in effect, that their complaints about Decision 2012/347 [1] granting a market authorisation under Regulation 1829/2003 [2] on genetically modified food and feed ('GM Regulation') to Monsanto Europe SA for its genetically modified soybean 'MON 87701 x MON 89788' ('the Soybean') were not well-founded. These decisions will hereinafter be referred to as the 'Commission Decisions'.

In summary, in rejecting the Appellants' challenges to the Commission Decisions, the General Court erred in law by:

a) Declaring inadmissible certain parts of the Appellants' applications for annulment on the basis that the requests for reconsideration submitted pursuant to Article 10 of the Aarhus Regulation [3] did not contain all of the precise detail or reasons put forward in support of the grounds of appeal before the General Court and/or that other procedural requirements were not met.

b) Applying an incorrect and impossible burden of proof on Non-Governmental Organisations ('NGOs') bringing challenges under Articles 10 and 12 of the Aarhus Regulation on behalf of the environment.

c) Failing to recognise that the Guidance issued by EFSA in accordance with its legal obligations give rise to a legitimate expectation that it will be complied with.

d) Determining that the two-stage safety assessment required by the GM Regulation (and EFSA's Guidance) did not need to be complied with. Instead, the first stage only, the comparison of the genetically modified crop and its comparators, could be (and was in this case) sufficient to satisfy the obligations set out by the GM Regulation.

e) Relying upon Regulation (EC) No 396/2005 ([4]) ('the Pesticide Regulation') in dismissing certain elements of the Appellants' challenge to the failure to investigate adequately the potential toxicity of the Soybean and to monitor post authorisation the impact of the Soybean.

([1]) Commission Implementing Decision of 28 June 2012 authorising the placing on the market of products containing, consisting of, or produced from genetically modified soybean MON 87701 × MON 89788 (MON-87701-2 × MON-89788-1) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council (PB 2012, L 171, p. 13).
([2]) Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ 2003, L 268, p. 1).
([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 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ 2005, L 70, p. 1).

Reference for a preliminary ruling from Upper Tribunal (Immigration and Asylum Chamber) London (United Kingdom) made on 20 February 2017 — Secretary of State for the Home Department v Rozanne Banger

(Case C-89/17)

(2017/C 129/09)

Language of the case: English

Referring court

Upper Tribunal (Immigration and Asylum Chamber) London

Parties to the main proceedings

Applicant: Secretary of State for the Home Department

Defendant: Rozanne Banger

Questions referred

1. Do the principles contained in the decision in Immigration Appeal Tribunal and Surinder Singh, ex parte Secretary of State for the Home Department (Case C-370/90) [1992] operate so as to require a Member State to issue or, alternatively, facilitate the provision of a residence authorisation to the non-Union unmarried partner of a EU citizen who, having exercised his Treaty right of freedom of movement to work in a second Member State, returns with such partner to the Member State of his nationality?

2. Alternatively, is there a requirement to issue or, alternatively, facilitate the provision of such residence authorisation by virtue of European Parliament and Council Directive 2004/38/EC [1] on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ('the Directive')?

3. Where a decision to refuse a residence authorisation is not founded on an extensive examination of the personal circumstances of the Applicant and is not justified by adequate or sufficient reasons is such decision unlawful as being in breach of Article 3(2) of the Citizens Directive?

4. Is a rule of national law which precludes an appeal to a court or tribunal against a decision of the executive refusing to issue a residence card to a person claiming to be an extended family member compatible with the Directive?

[1] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC OJ 2004, L 158, p. 77

Appeal brought on 20 February 2017 by Cellnex Telecom S.A., formerly Abertis Telecom S.A. against the judgment of the General Court (Fifth Chamber) delivered on 15 December 2016 in Joined Cases T-37/15 and T-38/15, Abertis Telecom Terrestre S.A. and Telecom Castilla-La Mancha, S.A. v European Commission

(Case C-91/17 P)

(2017/C 129/10)

Language of the case: Spanish

Parties

Appellant: Cellnex Telecom S.A., formerly Abertis Telecom S.A (represented by: J. Buendía Sierra and A. Lamadrid de Pablo, lawyers)

Other parties to the proceedings: European Commission and SES Astra

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— give final judgment on the action for annulment and annul the Commission's decision; and

— order the European Commission and SES Astra to pay the costs.

Pleas in law and main arguments

In the judgment under appeal, the General Court confirms a Commission decision on State aid concerning various measures adopted by the public authorities of the Spanish Autonomous Community of Castilla-La Mancha in order to ensure that the digital terrestrial television (DTT) signal reaches remote and less urbanised areas of the territory, in which only 2,5 % of the population live. In that decision, the Commission recognised that, in material terms, the market would not offer that service in the absence of public intervention. Nevertheless, it questioned whether the activity was classified as a service of general economic interest (SGEI) in the Spanish legislation, stating that, from a formal perspective, that activity had not been 'clearly' defined and commissioned by the public authorities. The Commission also stated that, in any event, those authorities were not empowered to opt for a certain technology when they organised the SGEI.

In support of its appeal, the appellant relies on two grounds of appeal, alleging that, in the judgment under appeal, the General Court erred in law in its interpretation of Articles 14, 106(2) and 107(1) TFEU and of Protocol No 26 annexed to the TFEU on Services of General Interest.

In particular, the appellant submits that the General Court erred:

— by going beyond the limit of the 'manifest error' in the assessment of the various measures defining and allocating SGEIs;

— by unduly limiting the 'wide discretion' of the Member States, which applies both to the definition and the 'organisation' of the SGIE and therefore includes the choice of the methods of providing the SGIE and the choice of a specific technology, irrespective of whether they are set out in the measure defining the SGIE or in a separate measure;

— by analysing the applicable Spanish law, distorting the meaning of the provisions analysed and of the case-law interpreting those provisions, and interpreting it in a manner which is manifestly contrary to its content and giving some information a scope which it should not have in relation to other information;

— by failing to observe that the 'definition' of the SGEI and the 'commissioning' of the SGEI to one or more undertakings may take place in one or more measures;

— by failing to observe that the 'definition' of the SGEI and its 'commissioning' do not require the use of a specific formula or expression, but rather a material and functional analysis; and

— by quantifying the alleged advantage received as the total amount of the contracts concluded by the public authorities, disregarding the fact that that amount is not a non-repayable subsidy, but rather constitutes consideration for the goods and services that the undertaking in question provided to the State.

Appeal brought on 20 February 2017 by Telecom Castilla-La Mancha, S.A. against the judgment of the General Court (Fifth Chamber) delivered on 15 December 2016 in Joined Cases T-37/15 and T-38/15, Abertis Telecom Terrestre S.A. and Telecom Castilla-La Mancha, S.A. v European Commission

(Case C-92/17 P)

(2017/C 129/11)

Language of the case: Spanish

Parties

Appellant: Telecom Castilla-La Mancha, S.A. (represented by: J. Buendía Sierra and A. Lamadrid de Pablo, lawyers)

Other parties to the proceedings: European Commission and SES Astra

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— give final judgment on the action for annulment and annul the Commission's decision; and

— order the European Commission and SES Astra to pay the costs.

Pleas in law and main arguments

In the judgment under appeal, the General Court confirms a Commission decision on State aid concerning various measures adopted by the public authorities of the Spanish Autonomous Community of Castilla-La Mancha in order to ensure that the digital terrestrial television (DTT) signal reaches remote and less urbanised areas of the territory, in which only 2,5 % of the population live. In that decision, the Commission recognised that, in material terms, the market would not offer that service in the absence of public intervention. Nevertheless, it questioned whether the activity was classified as a service of general economic interest (SGEI) in the Spanish legislation, stating that, from a formal perspective, that activity had not been 'clearly' defined and commissioned by the public authorities. The Commission also stated that, in any event, those authorities were not empowered to opt for a certain technology when they organised the SGEI.

In support of its appeal, the appellant relies on two grounds of appeal, alleging that, in the judgment under appeal, the General Court erred in law in its interpretation of Articles 14, 106(2) and 107(1) TFEU and of Protocol No 26 annexed to the TFEU on Services of General Interest.

In particular, the appellant submits that the General Court erred:

— by going beyond the limit of the 'manifest error' in the assessment of the various measures defining and allocating SGEIs;

— by unduly limiting the 'wide discretion' of the Member States, which applies both to the definition and the 'organisation' of the SGIE and therefore includes the choice of the methods of providing the SGIE and the choice of a specific technology, irrespective of whether they are set out in the measure defining the SGIE or in a separate measure;

— by analysing the applicable Spanish law, distorting the meaning of the provisions analysed and of the case-law interpreting those provisions, and interpreting it in a manner which is manifestly contrary to its content and giving some information a scope which it should not have in relation to other information;

— by failing to observe that the 'definition' of the SGEI and the 'commissioning' of the SGEI to one or more undertakings may take place in one or more measures;

— by failing to observe that the 'definition' of the SGEI and its 'commissioning' do not require the use of a specific formula or expression, but rather a material and functional analysis; and

— by quantifying the alleged advantage received as the total amount of the contracts concluded by the public authorities, disregarding the fact that that amount is not a non-repayable subsidy, but rather constitutes consideration for the goods and services that the undertaking in question provided to the State.

Action brought on 22 February 2017 — European Commission v Hellenic Republic

(Case C-93/17)

(2017/C 129/12)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: A. Bouchagiar and B. Stromsky)

Defendant: Hellenic Republic

Form of order sought

— declare that, by failing to take measures to comply with the judgment delivered by the Court of Justice on 28 June 2012 in Case C-485/10 *Commission* v *Greece*, EU:C:2012:395, the Hellenic Republic has failed to fulfil its obligations under that judgment and Article 260(1) TFEU;

— order the Hellenic Republic to pay to the Commission, into the 'European Union own resources' account, a penalty payment in the sum of EUR 34 974 for each day of delay in complying with the Court's judgment of 28 June 2012 in Case C-485/10, in respect of the period from the day on which judgment is delivered in the present case until the day on which the judgment of 28 June 2012 has been complied with;

— order the Hellenic Republic to pay to the Commission, into the 'European Union own resources' account, a lump sum whose amount is derived from multiplying a daily sum of EUR 3 828 by the number of days that will have elapsed from the day of delivery of the judgment of 28 June 2012 until the day on which the infringement has ended or, if there has not been compliance, until the day on which judgment is delivered in the present case;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

On 2 July 2008, the European Commission issued Decision 2009/610/EC on the measures C 16/04 (ex NN 29/04, CP 71/02 and CP 133/05) implemented by Greece in favour of Hellenic Shipyards. By that decision, the Commission found certain aid in favour of Hellenic Shipyards to be incompatible with the internal market and ordered its recovery, including interest calculated up to the point in time at which the aid was fully recovered.

On 8 October 2010, the Commission brought an action before the Court for infringement of Article 108(2) TFEU (Case C-485/10). The Court held on 28 June 2012 that, by failing to take, within the period laid down, all the measures necessary in order to implement the Commission decision and by failing to provide the information listed in Article 19 of that decision to the Commission within the period laid down, the Hellenic Republic had failed to fulfil its obligations under Articles 2, 3, 5, 6, 8, 9 and 11 to 19 of that decision.

Since the Hellenic Republic has not taken measures to comply with the judgment delivered by the Court on 28 June 2012, it has failed to fulfil its obligations under that judgment and Article 260(1) TFEU.

Appeal brought on 3 March 2017 by the Kingdom of Spain against the judgment of the General Court (Fifth Chamber) delivered on 15 December 2016 in Case T-808/14, Spain v Commission

(Case C-114/17 P)

(2017/C 129/13)

Language of the case: Spanish

Parties

Appellant: Kingdom of Spain (represented by: M. J. García-Valdecasas Dorrego, acting as Agent)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 15 December 2016 in Case T-808/14, *Kingdom of Spain* v *Commission*;

— annul Commission Decision C(2014) 6846 final of 1 October 2014 on State aid SA.27408 (C 24/2010) (ex NN 37/2010, ex CP 19/2009) granted by the Kingdom of Spain for the deployment of digital terrestrial television in remote and less urbanised areas of Castilla-La Mancha;

— order the Commission to pay the costs.

Pleas in law and main arguments

1. Error of law in relation to the interpretation of Article 1 of the contested decision, before its amendment, and in relation to the principles of sound administration and legal certainty, in that the General Court considered that that article also referred to the provision of equipment and that it did not entail any new obligation for the Kingdom of Spain.

2. Error of law in relation to the review of the Member States' definition and application of a Service of General Economic Interest, with regard to both the first and the fourth criteria established in *Altmark Trans and Regirungspräsidum Magdebrug* (C-280/00, EU:C:2003:415).

3. Error of law in relation to the judicial review of the compatibility of the aid, in accordance with Article 107(3)(c) TFEU, in that the General Court concluded that the measure in question was incompatible with the internal market because of the failure to observe the principle of technological neutrality.

Order of the President of the Court of 24 January 2017 (request for a preliminary ruling from the Audiencia Provincial de Cantabria — Spain) — Liberbank, SA v Rafael Piris del Campo

(Case C-431/15) ([1])

(2017/C 129/14)

Language of the case: Spanish

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

([1]) OJ C 354, 26.10.2015.

Order of the President of the Court of 9 February 2017 (request for a preliminary ruling from the Audiencia Provincial de Álava — Spain) — Laboral Kutxa v Esmeralda Martínez Quesada

(Case C-525/15) ([1])

(2017/C 129/15)

Language of the case: Spanish

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

([1]) OJ C 414, 14.12.2015.

Order of the President of the Court of 26 January 2017 (request for a preliminary ruling from the Audiencia Provincial de Cantabria — Spain) — Luca Jerónimo García Almodóvar, Catalina Molina Moreno v Banco de Caja España de Inversiones, Salamanca y Soria, SAU

(Case C-554/15) ([1])

(2017/C 129/16)

Language of the case: Spanish

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

([1]) OJ C 27, 25.1.2016.

Order of the President of the Court of 15 February 2017 (request for a preliminary ruling from the Audiencia Provincial de A Coruña — Spain) — Abanca Corporación Bancaria SA v María Isabel Vázquez Rosende

(Case C-1/16) ([1])

(2017/C 129/17)

Language of the case: Spanish

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

([1]) OJ C 98, 14.3.2016.

Order of the President of the Court of 10 January 2017 — European Commission v Republic of Finland

(Case C-42/16) ([1])

(2017/C 129/18)

Language of the case: Finnish

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

([1]) OJ C 118, 4.4.2016.

Order of the President of the Court of 18 January 2017 (request for a preliminary ruling from the Finanzgericht Münster — Germany) — X v Finanzamt I

(Case C-238/16) ([1])

(2017/C 129/19)

Language of the case: German

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

([1]) OJ C 343, 19.9.2016.

Order of the President of the Second Chamber of the Court of 14 February 2017 (request for a preliminary ruling from the Supremo Tribunal de Justiça — Portugal) — José Rui Garrett Pontes Pedroso v Netjets Management Limited

(Case C-242/16) ([1])

(2017/C 129/20)

Language of the case: Portuguese

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

([1]) OJ C 251, 11.7.2016.

Order of the President of the Court of 18 January 2017 (request for a preliminary ruling from the Bundesverwaltungsgericht — Austria) — Kärntner Ausgleichszahlungs-Fonds v Österreichische Finanzmarktaufsichtsbehörde (FMA)

(Case C-309/16) ([1])

(2017/C 129/21)

Language of the case: German

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

([1]) OJ C 335, 12.9.2016.

Order of the President of the Court of 15 December 2016 (request for a preliminary ruling from the Amtsgericht Hannover — Germany) — Andrea Witzel, Jannis Witzel, Jazz Witzel v Germanwings GmbH

(Case C-520/16) ([1])

(2017/C 129/22)

Language of the case: German

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

([1]) OJ C 30, 30.1.2017.

Order of the President of the Court of 19 January 2017 (request for a preliminary ruling from the Amtsgericht Hannover — Germany) — Ralf-Achim Vetter, Susanne Glang-Vetter, Anna Louisa Vetter, Carolin Marie Vetter v Germanwings GmbH

(Case C-521/16) ([1])

(2017/C 129/23)

Language of the case: German

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

([1]) OJ C 30, 30.1.2017.

GENERAL COURT

Judgment of the General Court of 7 March 2017 — Lauritzen Holding v EUIPO — DK Company (IWEAR)

(Case T-622/14) [1]

(European Union trade mark — Opposition proceedings — Application for European Union word mark IWEAR — Earlier European Union word mark INWEAR — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 129/24)

Language of the case: English

Parties

Applicant: Lauritzen Holding AS (Drøbak, Norway) (represented by: P. Walsh and S. Dunstan, Solicitors)

Defendant: European Union Intellectual Property Office (represented initially by P. Bullock and subsequently by D. Hanf, acting as Agents)

Intervener: DK Company A/S (Ikast, Denmark) authorised to replace the other party to the proceedings before the Board of Appeal of EUIPO (represented initially by M. Nielsen and E. Skovbo, and subsequently by E. Skovbo, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 2 June 2014 (Case R 1935/2013-2), concerning opposition proceedings between IC Companys A/S and Lauritzen Holding.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Lauritzen Holding AS to pay the costs, including the costs necessarily incurred by IC Companys A/S for the purposes of the proceedings before the Board of Appeal of the European Union Intellectual Property Office (EUIPO).*

[1] OJ C 351, 6.10.2014.

Judgment of the General Court of 14 March 2017 — Hersill v EUIPO — KCI Licensing (VACUP)

(Case T-741/14) [1]

(EU trade mark — Opposition proceedings — Application for the EU word mark VACUP — Earlier EU word marks MINIVAC and V.A.C. — No genuine use of the earlier mark — Article 42(2) and (3) of Regulation (EC) No 207/2009)

(2017/C 129/25)

Language of the case: English

Parties

Applicant: Hersill, SL (Móstoles, Spain) (represented by: M. Aznar Alonso and P. Koch Moreno, lawyers)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervening before the General Court: KCI Licensing, Inc. (San Antonio, Texas, United States) (represented by: S. Malynicz QC)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 14 August 2014 (Case R 1520/2013-2), relating to opposition proceedings between KCI Licensing and Hersill.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 14 August 2014 (Case R 1520/2013-2);*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Hersill, SL;*

3. *Orders KCI Licensing, Inc. to bear its own costs.*

(1) OJ C 448, 15.12.2014.

Judgment of the General Court of 14 March 2017 — Edison v EUIPO — Eolus Vind (e)

(Case T-276/15) (1)

(EU trade mark — Opposition proceedings — Application for an EU figurative mark — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 129/26)

Language of the case: English

Parties

Applicant: Edison SpA (Milan, Italy) (represented by: D. Martucci, F. Boscariol de Roberto and I. Gatto, lawyers)

Defendant: European Union Intellectual Property Office (represented by: D. Hanf and A. Folliard-Monguiral, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: Eolus Vind AB (publ) (Hässleholm, Sweden)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 24 February 2015 (Case R 2358/2013-1), relating to opposition proceedings between Edison and Eolus Vind.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Edison SpA to pay the costs.*

(1) OJ C 236, 20.7.2015.

Judgment of the General Court of 1 March 2017 — SEAE v KL

(Case T-278/15 P) ([1])

(Appeal — Civil service — Officials — Promotion — 2013 promotion procedure — Non-inclusion in the list of promoted officials — No error of law)

(2017/C 129/27)

Language of the case: French

Parties

Appellant: European External Action Service (EEAS) (represented initially by S. Marquardt and M. Silva, then by S. Marquardt, acting as Agents)

Other party to the proceedings: KL (represented by: N. de Montigny and J.-N. Louis, lawyers)

Intervener in support of the Appellant: European Commission (represented by: G. Berscheid and C. Berardis-Kayser, acting as Agents)

Re:

Appeal brought against the judgment of the Civil Service Tribunal [confidential] ([2]) seeking the annulment of that judgment.

Operative part of the judgment

The Court:

1) *Dismisses the appeal;*

2) *Orders the European External Action Service (EEAS) to bear its own costs and pay those incurred by KL in the present proceedings;*

3) *Orders the European Commission to bear its own costs incurred in the present proceedings.*

([1]) OJ C 294, 7.9.2015.
([2]) Confidential information omitted.

Judgment of the General Court of 14 March 2017 — Bank Tejarat v Council

(Case T-346/15) ([1])

(Common foreign and security policy — Restrictive measures taken against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Re-listing of the applicant — Obligation to state reasons — Manifest error of assessment — Res judicata — Misuse of powers — Fundamental rights)

(2017/C 129/28)

Language of the case: English

Parties

Applicant: Bank Tejarat (Tehran, Iran) (represented by: S. Zaiwalla, P. Reddy, A. Meskarian, Solicitors, M. Brindle QC, and R. Blakeley, Barrister)

Defendant: Council of the European Union (represented by: M. Bishop and A. Vitro, acting as Agents)

Re:

Application pursuant to Article 263 TFEU for annulment of Council Decision (CFSP) 2015/556 of 7 April 2015 amending Council Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2015 L 92, p. 101), and of Council Implementing Regulation (EU) 2015/549 of 7 April 2015 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2015 L 92, p. 12), in so far as they concern the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Bank Tejarat to pay the costs.*

([1]) OJ C 302, 14.9.2015.

Judgment of the General Court of 8 March 2017 — Rafhaelo Gutti v EUIPO — Transformados del Sur (CAMISERIA LA ESPAÑOLA)

(Case T-504/15) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark CAMISERIA LA ESPAÑOLA — Earlier national figurative mark representing two crossed flags — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 129/29)

Language of the case: Spanish

Parties

Applicant: Rafhaelo Gutti, SL (Loja, Spain) (represented by: I. Sempere Massa, lawyer)

Defendant: European Union Intellectual Property Office (represented by: B. Uriarte Valiente and A. Schifko, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Transformados del Sur, SA (Seville, Spain) (represented by: M. Salas Martin, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 2 July 2015 (Case R 2424/2014-4), relating to opposition proceedings between Transformados del Sur and Rafhaelo Gutti.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Rafhaelo Gutti, SL to pay the costs.*

([1]) OJ C 354, 26.10.2015.

Judgment of the General Court of 8 March 2017 — Biernacka-Hoba v EUIPO — Formata Bogusław Hoba (Formata)

(Case T-23/16) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark Formata — Absolute ground for invalidity — Absence of bad faith — Article 52(1)(b) of Regulation (EC) No 207/2009 — Relative ground for invalidity — Likelihood of confusion — Article 53(1)(a) and Article 8(1)(a) and (b) of Regulation (EC) No 207/2009)

(2017/C 129/30)

Language of the case: Polish

Parties

Applicant: Ilona Biernacka-Hoba (Aleksandrów Łódzki, Poland) (represented by: R. Rumpel, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard-Monguiral and K. Zajfert, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: Formata Bogusław Hoba (Aleksandrów Łódzki)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 4 November 2015 (Case R 102/2015-2), relating to invalidity proceedings between Ms Biernacka-Hoba and Formata Bogusław Hoba.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 4 November 2015 (Case R 102/2015-2), in so far as the Board of Appeal dismissed the application for a declaration of invalidity based on a relative ground for invalidity;*

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

3. *Orders EUIPO to bear its own costs and to pay half of the costs incurred by Ms Ilona Biernacka-Hoba;*

4. *Orders Ms Biernacka-Hoba to bear half of her own costs.*

([1]) OJ C 111, 29.3.2016.

Judgment of the General Court of 9 March 2017 — Puma v EUIPO (FOREVER FASTER)

(Case T-104/16) ([1])

(EU trade mark — International registration designating the European Union — Word mark FOREVER FASTER — Mark consisting of an advertising slogan — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Equal treatment — Principle of sound administration)

(2017/C 129/31)

Language of the case: English

Parties

Applicant: Puma SE (Herzogenaurach, Germany) (represented by: M. Schunke, lawyer)

Defendant: European Union Intellectual Property Office (represented by: H. O'Neill and K. Sidat Humphreys, acting as Agents)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 7 January 2016 (Case R 770/2015-1) relating to the international registration designating the European Union in respect of the word mark FOREVER FASTER.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Puma SE to pay the costs.*

(1) OJ C 165, 10.5.2016, p. 16.

Judgment of the General Court of 9 March 2017 — Marsh v EUIPO (ClaimsExcellence)

(Case T-308/16) (1)

(EU trade mark — Application for the EU word mark ClaimsExcellence — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2017/C 129/32)

Language of the case: German

Parties

Applicant: Marsh GmbH (Frankfurt am Main, Germany) (represented by: W. Riegger, lawyer)

Defendant: European Union Intellectual Property Office (represented by: R. Manea and D. Hanf, acting as Agents)

Objet

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 April 2016 (Case R 2358/2015-4), concerning an application for registration of the word sign ClaimsExcellence as an EU trade mark.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Marsh GmbH to pay the costs.*

(1) OJ C 287, 8.8.2016.

Judgment of the General Court of 9 March 2017 — Maximum Play v EUIPO (MAXPLAY)

(Case T-400/16) (1)

(EU trade mark — Application for the EU word mark MAXPLAY — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2017/C 129/33)

Language of the case: English

Parties

Applicant: Maximum Play, Inc. (San Francisco, California, United States) (represented by: M. Graf, lawyer)

Defendant: European Union Intellectual Property Office (represented by: E. Zaera Cuadrado, acting as Agent)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 26 May 2016 (Case R 2273/2015-4), concerning an application for registration of the word sign MAXPLAY as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Maximum Play, Inc. to pay the costs.*

([1]) OJ C 371, 10.10.2016.

Action brought on 10 February 2017 — RT v Parliament

(Case T-98/17)

(2017/C 129/34)

Language of the case: English

Parties

Applicant: RT (represented by: C. Bernard-Glanz, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— declare the application admissible;

— annul the decision of the appointing authority of 30 June 2016 rejecting a medical certificate; together with, and so far as necessary annul the decision of the appointing authority of 13 January 2017, rejecting the applicant's complaint; and

— order the defendant to pay 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 breach of Article 59 of Staff Regulations and Article 2 of the Internal Rules.

2. Second plea in law, alleging manifest error of assessment and breach of Article 59 of the Staff Regulations and Article 2 of the Internal Rules.

3. Third plea in law, alleging breach of Article 59 of the Staff Regulations and Article 2 of the Internal Rules, failure to state adequate reasons, and violation of the principle of legal certainty.

Action brought on 14 February 2017 — BTB Holding Investments and Duferco Participations Holding v Commission

(Case T-100/17)

(2017/C 129/35)

Language of the case: French

Parties

Applicants: BTB Holding Investments SA (Luxembourg, Luxembourg), Duferco Participations Holding SA (Luxembourg) (represented by: J.-F. Bellis, R. Luff and M. Favart, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- declare the present action admissible and well founded;
- annul Article 1(a), (b) and (d) and Article 2 of the Commission Decision of 20 January 2016 on State aid SA.33926 2013/C (ex 2013/NN, 2011/CP) implemented by Belgium in favor of Duferco;
- order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on three pleas in law, in respect of the first measure, namely the transfer by Foreign Strategic Investment Holding (FSIH) of a 49,9 % interest in Duferco US to Duferco Industrial Investment.

1. First plea in law, alleging errors of law and of assessment in respect of the market economy investor criterion and of the condition of the existence of an advantage set out in Article 107(1) TFEU and of a breach of the obligation to state reasons. That plea is divided into two parts:
   - first part, alleging errors of law and infringement of the market economy investor principle and of the burden of proof inasmuch as the Commission conflated the applicability and the application of the market economy investor criterion;
   - second part, alleging failure to state reasons, lack of care and breach of the duty of sound administration, as well as infringement of the market economy investor principle and Article 107(1) TFEU, in that the Commission failed to carry out an overall assessment of the market economy investor criterion in order to demonstrate the existence of an advantage.
2. Second plea in law, alleging errors of law and of assessment by the Commission, in that it failed to take account of all the relevant factors, did not acknowledge the economic rationality of the transaction and did not take account of the essential arguments relating to the profitability of the transaction in assessing the market economy investor criterion, thus disregarding the market economy investor principle, the obligation to state reasons within the meaning of Article 296 TFEU and the conditions of Article 107(1) TFEU. That plea is divided into three parts:
   - first part, alleging failure to take account of all the relevant factors;
   - second part, alleging failure to take account of the economic rationality of the transaction;
   - third part, alleging failure to state reasons, as well as infringement of the principle of sound administration and of the market economy investor criterion in that the Commission did not take account of the profitability of FSIH’s investment.
3. Third plea in law, alleging manifest errors of law and assessment, breach of the principles of due diligence and sound administration, of the market economy investor criterion, of the conditions relating to the existence of an advantage within the meaning of Article 107(1) TFEU and of the obligation to state reasons, inasmuch as the Commission did not properly evaluate FSIH’s participation in Duferco US in quantifying the amount of the alleged aid. That plea is divided into five parts:
   - first part, alleging inappropriate reference to Duferco US’s own funds;
   - second part, alleging that the enterprise value was incorrectly taken into account without the company’s debts being deducted;

— third part, alleging the taking into account of the results of the 2006 financial year only;

— fourth part, alleging the application of an arbitrary multiple which is too high;

— fifth part, alleging arbitrary rejection of almost all of KPMG's report of 28 May 2014.

Only BTB Holding Investments SA then relies on three pleas in law, relating to the second measure, namely the sale by FSIH of a 25 % holding in Duferco Participations Holding Limited to Bolmat Holding Limited.

1. First plea in law, alleging manifest errors of law and assessment and disregard for the principle of the market economy investor, the burden of proof, the condition of the existence of an advantage referred to in Article 107(1) TFEU and the obligation to state reasons referred to in Article 296 TFEU in that the Commission incorrectly applied the criterion of the market economy investor;

2. Second plea in law, alleging errors of law and assessment in that the Commission did not take account of essential information submitted by the parties, thus disregarding the principle of the market economy investor, the conditions of Article 107(1) TFEU, the duty of diligence and the obligation to state reasons within the meaning of Article 296 TFEU;

3. Third plea in law, alleging errors of law and of assessment in quantifying the amount of the alleged aid, in breach of the principles of sound administration and of the market economy investor and of Articles 107(1) and 296 TFEU.

BTB Holding Investments SA then relies on two pleas in law in so far as it concerns the fourth measure, namely the loan to Ultima Partners Limited.

1. First plea in law, alleging manifest errors of assessment of the facts and errors of law in that the Commission rejects the comparative approach in breach of the principle of the market economy investor, of Article 107(1) TFEU, as regards the existence of an advantage, of the obligation to state reasons and of the general principles of the protection of legitimate expectations and sound administration.

2. Second plea in law, alleging manifest errors of assessment of the facts and errors of law in determining the reference rate, leading to the incorrect application of the market economy investor criterion and infringement of the condition of the existence of an advantage within the meaning of Article 107(1) TFEU. That plea is divided into two parts:

   — first part, alleging that the Commission wrongly awarded a BB rating to Ultima Partners Limited in breach of the general principle of sound administration and of the obligation to state reasons within the meaning of Article 296 TFEU;

   — second part, alleging manifest errors of assessment in the classification of the security rights granted to FSIH in breach of the general principles of sound administration and of the protection of legitimate expectations, and of the obligation to state reasons within the meaning of Article 296 TFEU.

Action brought on 15 February 2017 — Apple v EUIPO — Apo International (apo)

(Case T-104/17)

(2017/C 129/36)

Language in which the application was lodged: English

Parties

Applicant: Apple Inc. (Cupertino, California, United States) (represented by: J. Olsen and P. Andreottola, Solicitors, and G. Tritton, Barrister)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Apo International Co. Ltd (Taipei City, Taiwan)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: EU figurative mark containing the word element 'apo' — Application for registration No 11 293 628

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 1 December 2016 in Case R 698/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— uphold the Applicant's appeal against the contested decision in its entirety;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Articles 8(1)(b) and (5) of Regulation No 207/2009;

— The contested decision offends against the principle of *reformatio in peius*;

— The Board of Appeal erred in finding that the passing off claim under Article 8(4) was not substantiated.

Action brought on 16 February 2017 — Steinhoff and Others v ECB

(Case T-107/17)

(2017/C 129/37)

Language of the case: German

Parties

Applicants: Frank Steinhoff (Hamburg, Germany), Ewald Filbry (Dortmund, Germany), Vereinigte Raiffeisenbanken Gräfenberg-Forchheim-Eschenau-Heroldsberg eG (Gräfenberg, Germany), Werner Bäcker (Rodgau, Germany), EMB Consulting SE (Mühltal, Germany) (represented by: O. Hoepner, lawyer)

Defendant: European Central Bank

Form of order sought

The applicants claim that the Court should order the defendant to pay the following sums plus interest in each case at a rate of 5 % above the respective base rate from the date on which the action was commenced:

— to the first applicant: EUR 314 000;

— to the second applicant: EUR 54 950;

— to the third applicant: EUR 2 355 000;

— to the fourth applicant: EUR 303 795;

— to the fifth applicant: EUR 750 460.

Pleas in law and main arguments

By the present action for damages, the applicants claim that the defendant breached its obligations by failing to refer, in its opinion of 17 February 2012 on the terms of securities issued or guaranteed by the Greek State (CON/2012/12), to the unlawfulness of the proposed restructuring of Greece's public debt through a mandatory exchange by Law 4050/2012.

In support of the action, the applicants raise four pleas in law.

1. First plea in law: failure to refer to the impermissibility of the compulsory restructuring in the light of the principle of *pacta sunt servanda*, since amending clauses cannot effectively be inserted retroactively into existing government bonds

2. Second plea in law: failure to find that the expropriatory effect of the envisaged Greek legislative proposal, which provided for a mandatory exchange without appropriate compensation being laid down in the legislation itself, constituted an infringement of the second sentence of Article 17(1) of the Charter of Fundamental Rights of the European Union

3. Third plea in law: failure to refer to an infringement of Article 63 TFEU

4. Fourth plea in law: failure to refer to an infringement of Article 124 TFEU

Action brought on 17 February 2017 — Pelikan v EUIPO — NBA Properties (NEW ORLEANS PELICANS)

(Case T-112/17)

(2017/C 129/38)

Language in which the application was lodged: English

Parties

Applicant: Pelikan Vertriebsgesellschaft mbH & Co. KG (Hannover, Germany) (represented by: U. Hildebrandt, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

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

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: EU figurative mark in black and white containing the word elements 'NEW ORLEANS PELICANS' — Application for registration No 11 518 487

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 16 December 2016 in Case R 408/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 8(1)(b) and (5) of Regulation No 207/2009.

Action brought on 20 February 2017 — Alba Aguilera and Others v EEAS

(Case T-119/17)

(2017/C 129/39)

Language of the case: French

Parties

Applicants: Ruben Alba Aguilera and 28 other applicants (Addis-Ababa, Ethiopia) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European External Action Service (EEAS)

Form of order sought

Declare and rule that:

— The contested decision is annulled, insofar as it reduces, with effect from 1 January 2016, the amount of the allowance for living conditions for staff posted to Ethiopia from 30 % to 25 %;

— The EEAS is ordered to make a lump-sum payment to the applicants, the amount of which shall be determined *ex aequo et bono* by the General Court, in respect of the non-pecuniary harm suffered;

— The EEAS is ordered to pay the costs.

Pleas in law and main arguments

The present action concerns the lawfulness of the EEAS's decision to reduce the allowance for living conditions (ALC) granted to members of the temporary staff of the EU in the Ethiopia delegation from 30 % to 25 %.

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

1. The first plea in law alleges infringement of the obligation to adopt the GIP of Annex X to the Staff Regulations.

2. The second plea in law alleges infringement of Article 10 of Annex X to the Staff Regulations, insofar as the method used by the EEAS to set the amount of the ALC in a particular place of employment takes account of the principle of 'regional coherence'.

3. The third plea in law alleges the multiple manifest errors of assessment which therefore render the contested decision unlawful.

Action brought on 28 February 2017 — Exaa Abwicklungsstelle für Energieprodukte v ACER

(Case T-123/17)

(2017/C 129/40)

Language of the case: German

Parties

Applicant: Exaa Abwicklungsstelle für Energieprodukte AG (Vienna, Austria) (represented by: B. Rajal, lawyer)

Defendant: Agency for the Cooperation of Energy Regulators (ACER)

Form of order sought

The applicant claims that the Court should:

— annul the decision of 17 February 2017 given by the Board of Appeal of the defendant in Case A-001-2017 (consolidated) concerning the rejection of the application for leave to intervene lodged by the applicant; and

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

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 infringement of Article 11 of the Rules of Procedure of the Board of Appeal of the defendant and infringement of Article 41 of the Charter of Fundamental Rights of the European Union, since the Board of Appeal erred in finding that the applicant had no legitimate interest in the outcome of the appeal proceedings.

2. Second plea in law, alleging infringement of the second paragraph of Article 296 TFEU (serious failure to state reasons).

3. Third plea in law, alleging infringement of the right to be heard, since the Board of Appeal failed to notify the applicant of the position taken by the defendant in relation to the application made by the applicant for leave to intervene.

Action brought on 27 February 2017 — Torné v Commission

(Case T-128/17)

(2017/C 129/41)

Language of the case: French

Parties

Applicant: Isabel Torné (Algés, Portugal) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission

Form of order sought

Declare and rule that:

— The decision of 16 April 2016 to reject her application to have her pension accrual rate and her retirement date fixed is annulled;

— The European Commission is ordered to pay the costs.

Pleas in law and main arguments

In the present action, the applicant contests the decision impliedly rejecting her application for an advance ruling concerning certain fixed and invariable factors in the calculation of her pension rights. She is of the opinion that the implied rejection of her application constitutes a failure to take a measure required by the Staff Regulations and, accordingly, is a measure adversely affecting her for the purpose of Article 90 of the Staff Regulations.

With regard to the factors for calculation of her pension, the applicant also contests the Commission's practice of taking the view that the transfer of a member of the temporary staff covered by Article 2(f) of the CEOS to another EU agency entails the conclusion of a new contract, separate from the previous contract, which shows a discontinuity in the career of that member of the temporary staff and therefore entails the application of the new rules under the Staff Regulations concerning retirement pensions.

Action brought on 2 March 2017 — Argus Security Projects v Commission and EEAS

(Case T-131/17)

(2017/C 129/42)

Language of the case: French

Parties

Applicant: Argus Security Projects Ltd (Limassol, Cyprus) (represented by: T. Bontinck and A. Guillerme, lawyers)

Defendants: European Commission, European External Action Service

Form of order sought

The applicant claims that the Court should:

— annul the set-off decision of the Commission in the sum of EUR 52 600, contained in its letter of 13 February 2017;

— annul the set-off decision of the Commission, acting on behalf of the EEAS accounting officer, in the sum of EUR 41 522, contained in its letter of 15 February 2017;

— annul the set-off decision of the Commission, acting on behalf of the EEAS accounting officer, in the sum of EUR 6 324, contained in its letter of 28 February 2017;

— order the European Commission and the EEAS to pay 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 infringement of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). The applicant claims that the adoption of the contested unilateral set-off decisions within a contractual context, where the other party to the contract brought an action for breach of contract before the court having jurisdictio as designated by the contract, must be regarded as unlawful and contrary to Article 47 of the Charter.

2. Second plea in law, alleging that the European Commission and the European External Action Service (EEAS) lack authority to adopt the set-off decisions within a contractual context. The defendants exceeded their powers by using unilateral powers in order to bring a contractual dispute to an end, and the contested decisions should therefore be annulled on the ground that the adopting institution had no power to issue them.

3. Third plea in law, alleging infringement of Article 80 of Regulation No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union ('the Financial Regulation'). The applicant submits that, since the proceedings before the Belgian court are still pending, the Commission's accounting officer could not lawfully treat the debt at issue as certain, of a fixed amount and due. The Commission therefore did not satisfy the conditions laid down in Article 80 of the Financial Regulation and thus could not be compensated.

Action brought on 2 March 2017 — Cotecnica v EUIPO — Mignini & Petrini (cotecnica MAXIMA)

(Case T-136/17)

(2017/C 129/43)

Language in which the application was lodged: English

Parties

Applicant: Cotecnica, SCCL (Bellpuig, Spain) (represented by: J. Erdozain López, J. Galán López and J. Devaureix, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Mignini & Petrini SpA (Petrignano di Assisi, Italy)

Details of the proceedings before EUIPO

Applicant: Applicant

Trade mark at issue: EU figurative mark containing the word elements 'cotecnica MAXIMA' — Application for registration No 13 292 495

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 17 November 2016 in Case R 853/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 28 February 2017 — Prim v EUIPO — Primed Halberstadt Medizintechnik (PRIMED)

(Case T-138/17)

(2017/C 129/44)

Language in which the application was lodged: English

Parties

Applicant: Prim, SA (Móstoles, Spain) (represented by: L. Broschat García, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Primed Halberstadt Medizintechnik GmbH (Halberstadt, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: EU word mark 'PRIMED' No 5 154 182

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 19 December 2016 in Joined Cases R 2494/2015-4 and R 163/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the intervener to pay the costs.

Plea in law

— Infringement of Article 8(1)(b) in conjunction with Article 53(1)(a) of Regulation No 207/2009.

Action brought on 6 March 2017 — Kibelisa v Council

(Case T-139/17)

(2017/C 129/45)

Language of the case: French

Parties

Applicant: Roger Kibelisa (Kinshasa, Democratic Republic of Congo) (represented by: O. Okito, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Regulation (EU) 2016/2230 implementing Council Decision (CFSP) 2016/2231 of 12 December 2016 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo, and amending Decision 2010/788/CFSP, in so far as it concerns Roger Kibelisa;

— order the Council to bear its own costs, and to pay those of the applicant and of all the interveners.

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 infringement of essential procedural requirements committed by the Council, in particular infringement of the applicant's rights of defence, infringement of the Council's obligation to state reasons and infringement of the applicant's right to an effective remedy.

2. Second plea in law, alleging infringement of general principles of EU law, in that the Council infringed the applicant's right to property.

Action brought on 6 March 2017 — Kampete. v Council

(Case T-140/17)

(2017/C 129/46)

Language of the case: French

Parties

Applicant: Ilunga Kampete (Kinshasa, Democratic Republic of the Congo) (represented by: O. Okito, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Regulation (EU) 2016/2230 implementing Council Decision (CFSP) 2016/2231 of 12 December 2016 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo, and amending Decision 2010/788/CFSP, in so far as it concerns Ilunga Kampete;

— order the Council to bear its own costs, and to pay those of the applicant and of all the interveners.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law which are essentially identical or similar to those relied on in Case T-139/17, Kibelisa v Council.

Action brought on 6 March 2017 — Amisi Kumba v Council

(Case T-141/17)

(2017/C 129/47)

Language of the case: French

Parties

Applicant: Gabriel Amisi Kumba (Kasa-Vubu, Democratic Republic of the Congo) (represented by: O. Okito, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Regulation (EU) 2016/2230 implementing Council Decision (CFSP) 2016/2231 of 12 December 2016 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo, and amending Decision 2010/788/CFSP, in so far as it concerns Mr Gabriel Amisi Kumba;

— order the Council to bear its own costs and to pay those incurred by the applicant and all interveners.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law which are essentially identical or similar to those relied on in Case T-139/17, *Kibelisa* v *Council*.

Action brought on 6 March 2017 — Kaimbi v Council

(Case T-142/17)

(2017/C 129/48)

Language of the case: French

Parties

Applicant: Delphin Kaimbi (Kinshasa, Democratic Republic of the Congo) (represented by: O. Okito, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Regulation (EU) 2016/2230 implementing Council Decision (CFSP) 2016/2231 of 12 December 2016 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo, and amending Decision 2010/788/CFSP, in so far as it concerns Mr Delphin Kaimbi;

— order the Council to bear its own costs and to pay those incurred by the applicant and all interveners.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law which are essentially identical or similar to those relied on in Case T-139/17, *Kibelisa* v *Council*.

Action brought on 6 March 2017 — Ilunga Luyoyo v Council

(Case T-143/17)

(2017/C 129/49)

Language of the case: French

Parties

Applicant: Ferdinand Ilunga Luyoyo (Kasa-Vubu, Democratic Republic of the Congo) (represented by: O. Okito, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Regulation (EU) 2016/2230 implementing Council Decision (CFSP) 2016/2231 of 12 December 2016 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo, and amending Decision 2010/788/CFSP, in so far as it concerns Mr Ferdinand Ilunga Luyoyo;

— order the Council to bear its own costs and to pay those incurred by the applicant and all interveners.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law which are essentially identical or similar to those relied on in Case T-139/17, *Kibelisa* v *Council*.

Action brought on 6 March 2017 — Numbi v Council

(Case T-144/17)

(2017/C 129/50)

Language of the case: French

Parties

Applicant: John Numbi (Kinshasa, Democratic Republic of Congo) (represented by: O. Okito, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Regulation (EU) 2016/2230, implementing Council Decision (CFSP) 2016/2231 of 12 December 2016, imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo, and amending Decision 2010/788/CFSP, in so far as it concerns Mr John Numbi;

— order the Council to bear, in addition to its own costs, those of the applicant and all the interveners.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law which are essentially identical or similar to those relied on in Case T-139/17, *Kibelisa* v *Council*.

Action brought on 6 March 2017 — Kanyama v Council

(Case T-145/17)

(2017/C 129/51)

Language of the case: French

Parties

Applicant: Célestin Kanyama (Gombe, Democratic Republic of the Congo) (represented by: O. Okito, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Regulation (EU) 2016/2230 implementing Council Decision (CFSP) 2016/2231 of 12 December 2016 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo, and amending Decision 2010/788/CFSP, in so far as it concerns Mr Célestin Kanyama;

— order the Council to bear its own costs and to pay those incurred by the applicant and all interveners.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law which are essentially identical or similar to those relied on in Case T-139/17, *Kibelisa* v *Council*.

Action brought on 7 March 2017 — Mondi v ACER

(Case T-146/17)

(2017/C 129/52)

Language of the case: German

Parties

Applicant: Mondi AG (Vienna, Austria) (represented by: B. Rajal, lawyer)

Defendant: Agency for the Cooperation of Energy Regulators (ACER)

Form of order sought

The applicant claims that the Court should:

— annul the decision given by the Board of Appeal of the defendant on 17 February 2017 in Case A-001-2017 (consolidated) concerning the rejection of the application for leave to intervene lodged by the applicant; and

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

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 infringement of Article 11 of the Rules of Procedure of the Board of Appeal of the defendant and infringement of Article 41 of the Charter of Fundamental Rights of the European Union, since the Board of Appeal erred in finding that the applicant had no legitimate interest in the outcome of the appeal proceedings.

2. Second plea in law, alleging infringement of the right to be heard, since the Board of Appeal failed to notify the applicant of the position taken by the defendant in relation to the application made by the applicant for leave to intervene.

Action brought on 8 March 2017 — Asolo v EUIPO — Red Bull (FLÜGEL)

(Case T-150/17)

(2017/C 129/53)

Language in which the application was lodged: English

Parties

Applicant: Asolo LTD (Limassol, Cyprus) (represented by: W. Pors, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Red Bull GmbH (Fuschl am See, Austria)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'FLÜGEL' — EU trade mark No 637 686

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 17 November 2016 in Case R 282/2015-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in its entirety;

— dismiss the application for a declaration of invalidity;

— order EUIPO and Red Bull to pay the costs.

Pleas in law

— Infringement of Article 54(2) of Regulation No 207/2009;

— Infringement of Article 53(1)(a) in conjuction with Article 8(1)(b) of Regulation No 207/2009.

Action brought on 8 March 2017 — Marriott Worldwide v EUIPO — Graf (Representation of a winged bull)

(Case T-151/17)

(2017/C 129/54)

Language in which the application was lodged: English

Parties

Applicant: Marriott Worldwide Corp. (Bethesda, Maryland, United States) (represented by: A. Reid, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Johann Graf (Gumpoldskirchen, Austria)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: EU figurative mark (Representation of a winged bull) — EU trade mark No 10 511 723

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 17 January 2017 in Case R 165/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 76(1) of Regulation No 207/2009;

— Infringement of Article 53(1)(a) in conjunction with Article 8(1)(b) of Regulation No 207/2009;

— Infringement of Article 53(2)(c) of Regulation No 207/2009.

Action brought on 9 March 2017 — Deichmann v Commission

(Case T-154/17)

(2017/C 129/55)

Language of the case: Dutch

Parties

Applicant: Deichmann SE (Essen, Germany) (represented by: A. Willems, S. De Knop and M. Meulenbelt, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare the present application admissible;

— annul Commission Implementing Regulation (EU) 2016/2257 of 14 December 2016 re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and produced by Chengdu Sunshine Shoes Co. Ltd, Foshan Nanhai Shyang Yuu Footwear Ltd and Fujian Sunshine Footwear Co. Ltd and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14; and

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 5(1) and (2) TEU owing to the absence of a legal basis for the contested regulation. In the alternative, the applicant claims that the Commission lacked competence to adopt the contested regulation.

2. Second plea in law, alleging infringement of Article 266 TFEU by reason of the failure to adopt measures necessary to ensure compliance with the judgment of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74).

3. Third plea in law, alleging infringement of Articles 1(1) and 10(1) of Regulation (EU) 2016/1036 [1] and of the principle of legal certainty by reason of the imposition of anti-dumping duties on the imports of footwear carried out during the period of application of Regulations No 1472/2006 [2] and No 1294/2009. [3]

4. Fourth plea in law, alleging infringement of Article 21 of Regulation (EU) 2016/1036 inasmuch as the anti-dumping duties were imposed without a new assessment of the EU interest being undertaken. According to the applicant, it was in any event manifestly incorrect to conclude that the imposition of the anti-dumping duties was in the interests of the EU.

5. Fifth plea in law, alleging infringement of Article 5(1) and (4) TEU by reason of the adoption of an act that goes further than is necessary to attain its goal.

(1) Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21).

(2) Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ 2006 L 275, p. 1).

(3) Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (OJ 2009 L 352, p. 1).

Action brought on 9 March 2017 — Van Haren Schoenen v Commission

(Case T-155/17)

(2017/C 129/56)

Language of the case: Dutch

Parties

Applicant: Van Haren Schoenen BV (Waalwijk, Netherlands) (represented by: A. Willems, S. De Knop and M. Meulenbelt, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare the present application admissible;

— annul Commission Implementing Regulation (EU) 2016/2257 of 14 December 2016 re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and produced by Chengdu Sunshine Shoes Co. Ltd, Foshan Nanhai Shyang Yuu Footwear Ltd and Fujian Sunshine Footwear Co. Ltd and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14; and

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of its action, the applicant relies on five pleas in law. The pleas put forward are identical to those put forward in Case T-154/17, *Deichmann* v *Commission*.

Action brought on 10 March 2017 — Cristalfarma v EUIPO — Novartis (ILLUMINA)

(Case T-157/17)

(2017/C 129/57)

Language in which the application was lodged: English

Parties

Applicant: Cristalfarma Srl (Milan, Italy) (represented by: R. Almaraz Palmero, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Novartis AG (Basel, Switzerland)

Details of the proceedings before EUIPO

Applicant: Applicant

Trade mark at issue: EU word mark 'ILLUMINA' — Application for registration No 11 934 239

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 11 January 2017 in Case R 1187/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party, should it intervene, to pay the costs of proceedings, including those incurred before the Board of Appeal.

Pleas in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009;

— Infringement of Articles 75, 42(2) and 64(1) of Regulation No 207/2009.

Action brought on 14 March 2017 — Consorzio di Garanzia dell'Olio Extra Vergine di Oliva di Qualità v Commission

(Case T-163/17)

(2017/C 129/58)

Language of the case: Italian

Parties

Applicant: Consorzio di Garanzia dell'Olio Extra Vergine di Oliva di Qualità (Rome, Italy) (represented by: A. Fratini and G. Pandolfi, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— allow the action and accordingly, declare that Commission has incurred non-contractual liability in accordance with Article 268 and the second paragraph of Article 340 TFEU;

— order the payment of damages for material harm (actual loss and loss of profit) and non-material harm (to image and reputation) suffered by the applicant;

— order the payment of compensatory interest and default interest;

— order the Commission to pay all the costs of the proceedings.

Pleas in law and main arguments

The applicant in the present action seeks to obtain damages for harm sustained, first, as a result of the Commission's uncoordinated management of EU programmes for the promotion of olive oil in third countries and, second, because of the failure, by the Commission, to eliminate successfully the harmful and distortive competitive effects caused by the uncoordinated overlap of the two programmes.

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

1. First plea in law, relating to the Commission's unlawful conduct in relation to infringement of the principle of non-discrimination laid down in Articles 18 and 21 of the Charter of Fundamental Rights of the European Union and the principle of protection of legitimate expectations, the Commission having failed to coordinate coherently EU programmes for the promotion of olive oil in third countries, as well the principle of good administration and the right to good administration laid down in Article 41(1) of the Charter of Fundamental Rights of European Union, the Commission having failed, according to the applicant, to adopt the measures which were required once it had become aware of the anti-competitive effects resulting from the lack of coordination of the two promotional campaigns.
2. Second plea in law, alleging the existence of actual and certain damage relating to the fact that, by failing to meet its obligations, the Commission caused significant harm to the applicant (actual loss, loss of profit and non-material harm).
3. Third plea in law, alleging the existence of a causal link relating to the fact that, the harm suffered being a sufficiently direct and immediate consequence of the poor management of the programmes of promotion of olive oil in third countries, a direct cause-and-effect relationship emerges from the Commission's conduct and the harm sustained, which must be made good in accordance with the second paragraph of Article 340 TFEU.

Action brought on 10 March 2017 — Emcur v EUIPO — Emcure Pharmaceuticals (EMCURE)

(Case T-165/17)

(2017/C 129/59)

Language in which the application was lodged: English

Parties

Applicant: Emcur Gesundheitsmittel aus Bad Ems GmbH (Bad Ems, Germany) (represented by: K. Bröcker, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Emcure Pharmaceuticals Ltd (Bhosari, India)

Details of the proceedings before EUIPO

Applicant: Other party to the proceedings before the Board of Appeal

Trade mark at issue: EU word mark 'EMCURE' — Application for registration No 12 269 049

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 13 December 2016 in Case R 790/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009.

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN