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(2018/C 032/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 29 November 2017 (request for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division) — United Kingdom) — C. King v The Sash Window Workshop Ltd, Richard Dollar

(Case C-214/16) ([1])

(Reference for a preliminary ruling — Protection of the safety and health of workers — Directive 2003/88/EC — Organisation of working time — Article 7 — Allowance in lieu of annual leave paid on termination of the employment relationship — National legislation requiring a worker to take his annual leave without the remuneration in respect of that leave being established)

(2018/C 032/02)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: C. King

Defendants: The Sash Window Workshop Ltd, Richard Dollar

Operative part of the judgment

1. *Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, and the right to an effective remedy set out in Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that, in the case of a dispute between a worker and his employer as to whether the worker is entitled to paid annual leave under the first of those articles, they preclude the worker having to take his leave first before establishing whether he has the right to be paid in respect of that leave.*

2. *Article 7 of Directive 2003/88 must be interpreted as precluding national provisions or practices that prevent a worker from carrying over and, where appropriate, accumulating, until termination of his employment relationship, paid annual leave rights not exercised in respect of several consecutive reference periods because his employer refused to remunerate that leave.*

([1]) OJ C 222, 20.6.2016.

Judgment of the Court (Third Chamber) of 29 November 2017 (request for a preliminary ruling from the Tribunale ordinario di Torino — Italy) — VCAST Limited v R.T.I. SpA

(Case C-265/16) ([1])

(Reference for a preliminary ruling — Approximation of laws — Copyright and related rights — Directive 2001/29/EC — Article 5(2)(b) — Private copying exception — Article 3(1) — Communication to the public — Specific technical means — Provision of a cloud computing service for the remote video recording of copies of works protected by copyright, without the consent of the author concerned — Active involvement of the service provider in the recording)

(2018/C 032/03)

Language of the case: Italian

Referring court

Tribunale ordinario di Torino

Parties to the main proceedings

Applicant: VCAST Limited

Defendant: R.T.I. SpA

Operative part of the judgment

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, in particular Article 5(2)(b) thereof, must be interpreted as precluding national legislation which permits a commercial undertaking to provide private individuals with a cloud service for the remote recording of private copies of works protected by copyright, by means of a computer system, by actively involving itself in the recording, without the rightholder's consent.

([1]) OJ C 270, 25.7.2016.

Judgment of the Court (Grand Chamber) of 28 November 2017 (request for a preliminary ruling from the Tribunal da Relação de Guimarães — Portugal) — Isabel Maria Pinheiro Vieira Rodrigues de Andrade, Fausto da Silva Rodrigues de Andrade v José Manuel Proença Salvador, Crédito Agrícola Seguros — Companhia de Seguros de Ramos Reais, SA, Jorge Oliveira Pinto

(Case C-514/16) ([1])

(Reference for a preliminary ruling — Compulsory insurance against civil liability in respect of the use of motor vehicles — Directive 72/166/EEC — Article 3(1) — Concept of 'use of vehicles' — Accident on a farm — Accident involving an agricultural tractor that was stationary but with the engine running in order to drive a spray pump for applying herbicide)

(2018/C 032/04)

Language of the case: Portuguese

Referring court

Tribunal da Relação de Guimarães

Parties to the main proceedings

Applicants: Isabel Maria Pinheiro Vieira Rodrigues de Andrade, Fausto da Silva Rodrigues de Andrade

Defendants: José Manuel Proença Salvador, Crédito Agrícola Seguros — Companhia de Seguros de Ramos Reais, SA, Jorge Oliveira Pinto

Operative part of the judgment

Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, must be interpreted as meaning that the concept of 'use of vehicles', referred to in that provision, does not cover a situation in which an agricultural tractor has been involved in an accident when its principal function, at the time of that accident, was not to serve as a means of transport but to generate, as a machine for carrying out work, the motive power necessary to drive the pump of a herbicide sprayer.

(1) OJ C 475, 19.12.2016.

Order of the Court (Third Chamber) of 23 November 2017 (request for a preliminary ruling from the Tribunale di Pordenone — Italy) — Criminal proceedings against Giorgio Fidenato

(Case C-107/16) (1)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Agriculture — Genetically modified food and feed — Emergency measures — National measure seeking to prohibit the cultivation of genetically modified maize MON 810 — Adoption and maintenance of the measure — Regulation (EC) No 1829/2003 — Article 34 — Regulation (EC) No 178/2002 — Articles 53 and 54 — Conditions of application — Precautionary principle)

(2018/C 032/05)

Language of the case: Italian

Referring court

Tribunale di Pordenone

Criminal proceedings against

Giorgio Fidenato

Operative part of the order

1. *Article 34 of Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed, read in conjunction with Article 53 of Regulation No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, must be interpreted as meaning that the European Commission is not required to adopt emergency measures within the meaning of Article 53 of Regulation No 178/2002 when a Member State officially informs the Commission, in accordance with Article 54(1) of that regulation, of the need to take such measures, as long as it is not evident that products authorised by Regulation No 1829/2003 or in accordance with that regulation are likely to constitute a serious risk to human health, animal health or the environment.*

2. *Article 34 of Regulation No 1829/2003, read in conjunction with Article 54 of Regulation No 178/2002, must be interpreted as meaning that a Member State may, after officially informing the European Commission of the need to resort to emergency measures, and where the Commission has not acted in accordance with Article 53 of Regulation No 178/2002 adopt such measures at the national level.*

3. *Article 34 of Regulation No 1829/2003, read in conjunction with the precautionary principle as set out in Article 7 of Regulation No 178/2002, must be interpreted as meaning that it does not give Member States the option of adopting, in accordance with Article 54 of Regulation No 178/2002, interim emergency measures solely on the basis of that principle, without the conditions set out in Article 34 of Directive No 1829/2003 being satisfied.*

(1) OJ C 165, 10.5.2016.

Order of the Court (Eighth Chamber) of 16 November 2017 (request for a preliminary ruling from the Ministarstvo pomorstva, prometa i infrastrukture — Uprava zračnog prometa, elektroničkih komunikacija i pošte — Croatia) — Hrvatska agencija za civilno zrakoplovstvo v Air Serbia A. D. Beograd, Dane Kondić

(Case C-476/16) (1)

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court of Justice — Whether the body making a reference is a 'court or tribunal' — Independence — Manifest Inadmissibility of the request for a preliminary ruling)

(2018/C 032/06)

Language of the case: Croatian

Referring court

Ministarstvo pomorstva, prometa i infrastrukture — Uprava zračnog prometa, elektroničkih komunikacija i pošte

Parties to the main proceedings

Applicant: Hrvatska agencija za civilno zrakoplovstvo

Defendant: Air Serbia A.D. Beograd, Dane Kondić

Operative part of the order

The request for a preliminary ruling made by the Ministarstvo pomorstva, prometa i infrastrukture — Uprava zračnog prometa, elektroničkih komunikacija i pošte (Ministry of Maritime Affairs, Transport and Infrastructure — Directorate for Air Transport, Electronic Communications and Postal Services, Croatia), by decision of 26 August 2016, is manifestly inadmissible.

(1) OJ C 419, 14.11.2016.

Order of the Court (Eighth Chamber) of 16 November 2017 (request for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Instituto de Financiamento da Agricultura e Pescas, IP v Maxiflor — Promoção e Comercialização de Plantas, Importação e Exportação, Lda

(Case C-491/16) (1)

(Reference for a preliminary ruling — Article 53(2) and Article 99 of the Rules of Procedure of the Court — Regulation (EC) No 1260/1999 — Regulation (EC, Euratom) No 2988/95 — Article 3(1) — Protection of the European Union's financial interests — Concept of 'multiannual programme' — Scope of application)

(2018/C 032/07)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Instituto de Financiamento da Agricultura e Pescas, IP

Defendant: Maxiflor — Promoção e Comercialização de Plantas, Importação e Exportação, Lda

Operative part of the order

1. *The first and third questions referred by the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal) are manifestly inadmissible.*

2. *The second sentence of the second subparagraph of Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests must be interpreted as meaning that an operational programme, for the purposes of Article 9(f) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, such as the operational programme 'Agriculture and rural development', approved by Commission Decision C(2000) 2878 of 30 October 2000, does not come within the concept of 'multiannual programme', within the meaning of the first of those provisions, unless that programme is already covered by concrete actions to be implemented, which is to be determined by the referring court.*

(1) OJ C 441, 28.11.2016.

Order of the Court (Third Chamber) of 15 November 2017 (request for a preliminary ruling from the Hanseatisches Oberlandesgericht in Bremen — Germany) — Execution of European arrest warrants issued against Pál Aranyosi

(Case C-496/16) (1)

(Reference for a preliminary ruling — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Grounds for refusal to execute — Charter of Fundamental Rights of the European Union — Article 4 — Prohibition of inhuman or degrading treatment — Conditions of detention in the issuing Member State — Annulment of the European arrest warrant by the issuing judicial authority — Hypothetical question — No need to adjudicate)

(2018/C 032/08)

Language of the case: German

Referring court

Hanseatisches Oberlandesgericht in Bremen

Party to the main proceedings

Pál Aranyosi

Operative part of the order

There is no need to proceed to judgment on the request for a preliminary ruling made by the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court, Bremen, Germany) by decision of 12 September 2016.

(1) OJ C 475, 19.12.2016

Order of the Court (Seventh Chamber) of 21 November 2017 (request for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Giovanna Judith Kerr v Fazenda Pública

(Case C-615/16) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 15(2) and Article 135(1)(f) — Rights to use immovable property — Exemptions — Scope — Concept of 'negotiation')

(2018/C 032/09)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Giovanna Judith Kerr

Defendant: Fazenda Pública

Operative part of the order

Article 15(2) and Article 135(1)(f) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the concept of 'negotiation', within the meaning of the latter provision, may relate to an activity, such as that developed by the applicant in the main proceedings, provided that that activity is that of an intermediary paid to provide a service to one of the parties to a contract concerning financial transactions in respect of title to property, that service consisting of taking the necessary steps to ensure that the vendor and buyer sign that contract, without the intermediary himself signing the contract and, in any event, without that intermediary having any interest in the content of that contract. It is for the referring court to determine whether those conditions are fulfilled in the case before it.

([1]) OJ C 151, 15.5.2017.

Order of the Court (Sixth Chamber) of 23 November 2017 (request for a preliminary ruling from the Tribunal da Relação do Porto — Portugal) — Hélder José Cunha Martins v Fundo de Garantia Automóvel

(Case C-131/17) ([1])

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court of Justice — Charter of Fundamental Rights of the European Union — Article 47 — Right to an effective remedy and to a fair trial — Question which does not concern a rule of EU law other than the Charter of Fundamental Rights — Lack of jurisdiction of the Court)

(2018/C 032/10)

Language of the case: Portuguese

Referring court

Tribunal da Relação do Porto

Parties to the main proceedings

Applicant: Hélder José Cunha Martins

Defendant: Fundo de Garantia Automóvel

Operative part of the order

The Court of Justice of the European Union manifestly lacks jurisdiction to answer the questions referred by the Tribunal da Relação do Porto (Court of Appeal, Oporto, Portugal).

(1) OJ C 168, 29.5.2017.

Order of the Court (Seventh Chamber) of 21 November 2017 (request for a preliminary ruling from the Budai Központi Kerületi Bíróság — Hungary) — VE v WD

(Case C-232/17) (1)

(Reference for a preliminary ruling — Article 53(2) and Article 94 of the Rules of Procedure of the Court of Justice — Consumer protection — Directive 93/13/EEC — Unfair terms in consumer contracts — Credit agreement denominated in a foreign currency — Lack of sufficient information concerning the factual and legal context of the dispute in the main proceedings and the reasons justifying the need for a reply to the questions referred — Manifest inadmissibility)

(2018/C 032/11)

Language of the case: Hungarian

Referring court

Budai Központi Kerületi Bíróság

Parties to the main proceedings

Applicant: VE

Defendant: WD

Operative part of the order

The request for a preliminary ruling from the Budai Központi Kerületi Bíróság (Central District Court, Buda, Hungary), by decision of 10 April 2017, is manifestly inadmissible.

(1) OJ C 256, 7.8.2017.

Order of the Court of 16 November 2017 (request for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Instituto de Financiamento da Agricultura e Pescas, IP v António da Silva Rodrigues

(Case C-243/17) (1)

(Reference for a preliminary ruling — Article 53(2) and Article 99 of the Rules of Procedure of the Court — Regulation (EC) No 1260/1999 — Regulation (EC, Euratom) No 2988/95 — Article 3(1) — Protection of the European Union's financial interests — Concept of 'multiannual programme' — Scope of application)

(2018/C 032/12)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Instituto de Financiamento da Agricultura e Pescas, IP

Defendant: António da Silva Rodrigues

Operative part of the order

1. *The first subparagraph of Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests must be interpreted as meaning that, in the case of an irregularity which is neither continuous nor repeated, the limitation period of four years provided for in that provision runs from the date the irregularity was committed.*

2. *The second, third and fourth questions referred by the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal) are manifestly inadmissible.*

([1]) OJ C 256, 7.8.2017.

Order of the Court (Seventh Chamber) of 21 November 2017 (request for a preliminary ruling from the Budai Központi Kerületi Bíróság — Hungary) — Zoltán Rózsavölgyi, Zoltánné Rózsavölgyi v Unicredit Leasing Hungary Zrt., Unicredit Leasing Immo Truck Zrt.

(Case C-259/17) ([1])

(Reference for a preliminary ruling — Article 53(2) and Article 94 of the Rules of Procedure of the Court of Justice — Consumer protection — Unfair terms in consumer contracts — Loan contract denominated in a foreign currency — Insufficient information regarding the factual and regulatory context of the dispute in the main proceedings and the reasons justifying the need for an answer to the questions referred for a preliminary ruling — Manifest inadmissibility)

(2018/C 032/13)

Language of the case: Hungarian

Referring court

Budai Központi Kerületi Bíróság

Parties to the main proceedings

Applicants: Zoltán Rózsavölgyi, Zoltánné Rózsavölgyi

Defendants: Unicredit Leasing Hungary Zrt., Unicredit Leasing Immo Truck Zrt.

Operative part of the order

The request for a preliminary ruling made by the Budai Központi Kerületi Bíróság (Central District Court, Buda, Hungary), by decision of 31 March 2017, is manifestly inadmissible.

([1]) OJ C 256, 7.8.2017.

Order of the Court of 23 November 2017 (request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — 'Geocycle Bulgaria' EOOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Veliko Tarnovo pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Case C-314/17) ([1])

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Principles of fiscal neutrality and effectiveness — Reverse charge regime — Refusal to allow the recipient of an invoice to deduct input VAT — Decision of the tax authorities establishing a tax payable by the recipient of goods)

(2018/C 032/14)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: 'Geocycle Bulgaria' EOOD

Defendant: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Veliko Tarnovo pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Operative part of the order

The principles of fiscal neutrality and effectiveness of the common system of value added tax must be interpreted as precluding a Member State from refusing to allow the recipient of a supply to deduct input value added tax, where, with respect to the same transaction, value added tax is collected a first time from the provider of the goods or service, since he included it on the invoice he issued, then a second time from the purchaser, in situations in which national legislation does not provide for the possibility of adjusting the value added tax where there is a tax adjustment notice.

([1]) OJ C 256, 7.8.2017.

Order of the Court (Sixth Chamber) of 23 November 2017 (request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Basilicata — Italy) — Olympus Italia Srl v Istituto di Ricovero e Cura a Carattere Scientifico — Centro di Riferimento Oncologico della Basilicata (CROB) di Rionero in Vulture

(Case C-486/17) ([1])

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court of Justice — Public works contracts, public supply contracts and public service contracts — Directive 2014/24/EU — Article 4 — Threshold amount for public contracts — Contracts which may have some cross-border interest — Request manifestly inadmissible)

(2018/C 032/15)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Basilicata

Parties to the main proceedings

Applicant: Olympus Italia Srl

Defendant: Istituto di Ricovero e Cura a Carattere Scientifico — Centro di Riferimento Oncologico della Basilicata (CROB) di Rionero in Vulture

Other party: Crimo Italia Srl

Operative part of the order

The request for a preliminary ruling made by the Tribunale amministrativo regionale per la Basilicata (Administrative Court for the Basilicata Region, Italy) by decision of 22 July 2017, received at the Court on 10 August 2017, is manifestly inadmissible.

([1]) OJ C 374, 6.11.2017.

Appeal brought on 27 July 2017 by Laure Camerin against the order of the General Court (Second Chamber) made on 1 June 2017 in Case T-647/16 Camerin v Parliament

(Case C-453/17 P)

(2018/C 032/16)

Language of the case: French

Parties

Appellant: Laure Camerin (represented by: M. Casado García-Hirschfeld, avocat)

Other party to the proceedings: European Parliament

By order of 30 November 2017, the Court (Second Chamber) dismissed the appeal.

Appeal brought on 1 August 2017 by Società agricola Taboga Leandro e Fidenato Giorgio Ss against the order of the General Court (Fifth Chamber) delivered on 6 June 2017 in Case T-172/17, Società agricola Taboga Leandro e Fidenato Giorgio v Parliament and Council

(Case C-467/17 P)

(2018/C 032/17)

Language of the case: Italian

Parties

Appellant: Società agricola Taboga Leandro e Fidenato Giorgio Ss (represented by: F. Longo, avvocato)

Other parties to the proceedings: European Parliament and Council of the European Union

By order of 29 November 2017, the Court (Eighth Chamber) dismissed the appeal and ordered Società agricola Taboga Leandro e Fidenato Giorgio Ss to bear its own costs.

Request for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 13 October 2017 — Kreyenhop & Kluge GmbH & Co. KG v Hauptzollamt Hannover

(Case C-593/17)

(2018/C 032/18)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Kreyenhop & Kluge GmbH & Co. KG

Defendant: Hauptzollamt Hannover

Questions referred

1. Is Commission Implementing Regulation (EU) No 767/2014 of 11 July 2014 concerning the classification of certain goods in the Combined Nomenclature ([1]) valid?

2. If the answer to the first question is in the negative: Is the European Commission's explanatory note to subheading 1902 3010 of the Combined Nomenclature, which was published on 4 March 2015, to be taken into consideration in the interpretation of subheading 1902 3010 of the CN in so far as frying is mentioned in that note as an example of an industrial drying process?

([1]) OJ 2014 L 209, p. 12.

Request for a preliminary ruling from the Gerechtshof Den Haag (Netherlands) lodged on 6 November 2017 — Criminal proceedings against Tronex BV

(Case C-624/17)

(2018/C 032/19)

Language of the case: Dutch

Referring court

Gerechtshof Den Haag

Parties to the main proceedings

Tronex BV

Questions referred

Question 1

1. (a) Is a retailer which sends back an object returned by a consumer, or an object in its product range that has become redundant, to its supplier (namely the importer, wholesaler, distributor, producer or anyone else from whom it has obtained the object) pursuant to the agreement between the retailer and its supplier to be regarded as a holder which discards the object, within the meaning of Article 3.1 of the Framework Directive? ([1])

   (b) Would the answer to Question 1.(1) be different if the object is one which has an easily repairable fault or defect?

   (c) Would the answer to Question 1.(1) be different if the object is one which has a fault or defect of such extent or severity that it is, as a result, no longer suitable or usable for its original purpose?

Question 2

2. (a) Is a retailer or supplier which sells on an object returned by a consumer, or an object in its product range which has become redundant, to a buyer (of residual consignments) to be regarded as a holder which discards the object, within the meaning of Article 3.1 of the Framework Directive?

(b) Is the answer to Question 2.(1) affected by the amount of the purchase price to be paid by the buyer to the retailer or supplier?

(c) Would the answer to Question 2.(1) be different if the object is one which has an easily repairable fault or defect?

(d) Would the answer to Question 2.(1) be different if the object is one which has a fault or defect of such extent or severity that it is, as a result, no longer suitable or usable for its original purpose?

Question 3

3. (a) Is the buyer which sells on to a (foreign) third party a large consignment of goods bought from retailers and suppliers and returned by consumers, and/or goods that have become redundant, to be regarded as a holder which discards a consignment of goods, within the meaning of Article 3.1 of the Framework Directive?

(b) Is the answer to Question 3.(1) affected by the amount of the purchase price to be paid by the third party to the buyer?

(c) Would the answer to Question 3.(1) be different if the consignment of goods also contains some goods which have an easily repairable fault or defect?

(d) Would the answer to Question 3.(1) be different if the consignment of goods also contains some goods which have a fault or defect of such extent or severity that the object in question is no longer, as a result, suitable or usable for its original purpose?

(e) Is the answer to Questions 3.(3) or 3.(4) affected by the percentage of the whole consignment of the goods sold on to the third party that is made up of defective goods? If so, what percentage is the tipping point?

(1) Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3).

Request for a preliminary ruling from the Supremo Tribunal de Justiça (Portugal) lodged on 18 October 2017 — J. Portugal Ramos Vinhos SA v Adega Cooperativa de Borba CRL

(Case C-629/17)

(2018/C 032/20)

Language of the case: Portuguese

Referring court

Supremo Tribunal de Justiça

Parties to the main proceedings

Applicant: J. Portugal Ramos Vinhos SA

Defendant: Adega Cooperativa de Borba CRL

Question referred

In relation to the wording in Article [3](1)(c) of Directive 2008/95/EC, ([1]) *'indications which may serve, in trade, to designate other characteristics of the goods or service'*, when used in the assessment of the permissibility of the registration of signs or indications intended to be adopted in order to designate wine products, must that wording be interpreted to the effect that it covers, in the verbal expressions adopted as a mark, including a protected geographical name as a designation of origin of wine, a reference to the word '*adega*' [winery] — in the sense of a term currently used to identify the facilities and sites where the production process for such goods takes place — in the verbal expression adopted as a mark, in situations where that word (*adega*) is one of the various verbal elements which make up the corporate name of the legal entity seeking to register the mark?

([1]) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (Codified version) (OJ 2008 L 299, p. 25).

Request for a preliminary ruling from the Tribunal Judicial da Comarca de Lisboa (Portugal) lodged on 15 November 2017 — Cogeco Communications Inc v Sport TV Portugal and Others

(Case C-637/17)

(2018/C 032/21)

Language of the case: Portuguese

Referring court

Tribunal Judicial da Comarca de Lisboa

Parties to the main proceedings

Applicant: Cogeco Communications Inc

Defendants: Sport TV Portugal, SA, Controlinveste-SGPS SA, NOS-SGPS, SA

Questions referred

1. May Articles 9(1) and 10(2), (3) and (4) of Directive 2014/104/EU of 26 November 2014, ([1]) as well as the remaining provisions of that directive or general principles of EU law applicable, be interpreted as creating rights for a private party (in this case, a commercial limited company subject to Canadian law) which it may enforce in court proceedings against another private party (in this case, a commercial limited company subject to Portuguese law) in the context of an action seeking compensation for alleged damage sustained as a result of an infringement of competition law, in particular, when as at the date on which the action in question was brought (27 February 2015), the deadline for Member States to transpose that directive into national law, as provided for in Article 21(1) of that directive, had not yet even expired?

2. May Article 10(2), (3) and (4) of the Directive, as well as the remaining provisions of the Directive or general principles of EU law applicable, be interpreted as precluding, as incompatible therewith, a national provision, such as Article 498 (1) of the Portuguese Civil Code which, when applied to facts which occurred before the publication of the Directive, before its entry into force and before the date laid down for its transposition, in an action also brought before that last date:

   (a) lays down a three-year limitation period for a right to compensation based on non-contractual civil liability;

   (b) lays down that that three-year period starts to run from the date on which the injured party was aware of its right, even if unaware of the identity of the person liable and the full extent of the damage; and

(c) does not include any provision requiring or authorising the suspension or interruption of that period simply because a competition authority has taken measures in the context of an investigation or a process relating to an infringement of competition law to which the action for compensation relates?

3. May Article 9(1) of the Directive, as well as the remaining provisions of the Directive or general principles of EU law applicable, be interpreted as precluding, as incompatible therewith, a national provision, such as Article 623 of the Portuguese Civil Procedure Code which, when applied to facts which occurred before the Directive entered into force and before the date laid down for its transposition, in an action also brought before that last date:

(a) provides that a final order in infringement proceedings does not produce effects in any civil actions in which legal relationships depending on the commission of the infringement are discussed? Or (depending on the interpretation)

(b) lays down that such a final order in infringement proceedings constitutes, in relation to third parties, only a rebuttable presumption as regards the existence of the facts which satisfy the conditions for the imposition of a penalty and the elements of an offence, in any civil actions in which legal relationships depending on the commission of the infringement are discussed?

4. May Articles 9(1) and 10(2),(3) and (4) of the Directive, the third paragraph of Article 288 of the Treaty on the Functioning of the European Union, or any other provisions of primary or secondary law, case-law precedents or general principles of the European Union applicable, be interpreted as precluding, as incompatible therewith, the application of provisions of national law, such as Article 498(1) of the Portuguese Civil Code and Article 623 of the Portuguese Civil Procedure Code which, when applied to facts which occurred before the publication of the Directive, before its entry into force and before the date laid down for its transposition, in an action also brought before that last date, do not take into consideration the text and purpose of the Directive and do not seek to achieve the result pursued by it?

5. In the alternative, and only if the Court of Justice of the European Union answers any of the preceding questions in the affirmative, may Article 22 of the Directive, as well as the remaining provisions of the Directive or general principles of EU law applicable, be interpreted as precluding, as incompatible therewith, the application to the case by the national court of Article 498(1) of the Portuguese Civil Code or Article 623 of the Portuguese Civil Procedure Code in their current version, but interpreted and applied in such a way as to be compatible with the provisions of Article 10 of the Directive?

6. If question 5 is answered in the affirmative, may a private party rely on Article 22 of the Directive against another private party before a national court in an action seeking compensation for the alleged damage sustained as a result of an infringement of competition law?

([1]) Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union ('the Directive') (OJ 2014 L 349, p. 1).

Request for a preliminary ruling from the Vrhovno sodišče Republike Slovenije lodged on 27 November 2017 — E. G. v Republic of Slovenia

(Case C-662/17)

(2018/C 032/22)

Language of the case: Slovenian

Referring court

Vrhovno sodišče Republike Slovenije

Parties to the main proceedings

Appellant: E. G.

Respondent: Republic of Slovenia

Questions referred

1. Is the appellant's interest within the meaning of the second paragraph of Article 46(2) of Procedural Directive II ([1]) to be interpreted to the effect that subsidiary protection status does not grant the same rights and benefits as refugee status if, under national law, foreign nationals granted international protection do enjoy the same rights and benefits but a different approach is adopted in defining the duration or cessation of international protection, inasmuch as refugee status is granted to refugees for an indefinite period but ceases when the circumstances on the basis of which it was granted cease, whereas subsidiary protection is granted for a specified period and is extended if the reasons for it continue to exist?

2. Must the appellant's interest within the meaning of the second paragraph of Article 46(2) of Procedural Directive II be interpreted to the effect that subsidiary protection status does not offer the same rights and benefits as refugee status, if, under national law, foreign nationals granted international protection do enjoy the same rights and benefits but the ancillary rights on which those rights and benefits are based are different?

3. Is it necessary, in the light of the appellant's individual situation, to examine whether, in view of his particular circumstances, the grant of refugee status would confer on him more rights than those afforded by the grant of subsidiary protection, or whether, for the interest referred to in the second paragraph of Article 46(2) of Procedural Directive II to continue to exist, it is sufficient for there to be legislative provisions [Or. 8] that draw a distinction between the ancillary rights that are based on the rights and benefits of the two forms of international protection?

([1]) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

Appeal brought on 24 November 2017 by European Central Bank against the order of the General Court (Second Chamber) delivered on 12/09/2017 in Case T-247/16: Fursin and others v European Central Bank

(Case C-663/17 P)

(2018/C 032/23)

Language of the case: English

Parties

Appellant: European Central Bank (represented by: E. Koupepidou and C. Hernández Saseta, Agents, B. Schneider, Rechtsanwalt)

Other parties to the proceedings: Trasta Komercbanka AS, Ivan Fursin, Igors Buimisters, C & R Invest SIA, Figon Co. Ltd, GCK Holding Netherlands BV, Rikam Holding SA

Form of order sought

The applicant claims that the Court should:

(i) annul the appealed order insofar as it holds that the shareholder applicants had an interest and legal standing in the General Court regarding the action for annulment of the contested decision (operative point 2 of the appealed order);

(ii) give a final decision on the substance and dismiss the action brought by the shareholder applicants as inadmissible; and

(iii) order the Applicants to bear the costs.

Pleas in law and main arguments

In support of the appeal, the appellant relies on three pleas in law.

1. First plea in law, alleging that the shareholder applicants (i.e. the shareholders of Trasta Komercbanka, as opposed to Trasta Komercbanka itself) had no interest in bringing an application for annulment that is separate from the legal interest of Trasta Komercbanka.

   The first plea in law is based on the following Arguments:

   — The applicant submits that the General Court has misinterpreted the case law requiring that shareholders show that they possess a separate interest in bringing proceedings against a Decision addressed to the undertaking which they partly controlled. In particular, the General Court erred in law when it held, in its order of 12 September 2017, that this case law did not apply in Case T-247/16

   — The shareholder applicants have failed to show they possess a separate interest from the one possessed by Trasta Komercbanka: their legal position has not been affected by the contested decision (as opposed to the initiation of liquidation, which is a distinct act). The shareholder applicants cannot be said to have a legal interest in Trasta Komercbanka having a banking licence which differs from Trasta Komercbanka's own legal interest in having a banking licence.

   — In particular, the interest in claiming damages or the shareholders' economic interest in receiving dividends should not be considered a separate legal interest.

2. Second plea in law, alleging that the shareholder applicants had no *locus standi*, given that the contested decision was not of individual concern to them.

   The second plea in law is based on the following Arguments:

   — The shareholder applicants are not individually concerned by the contested decision as it does not affect them by reason of certain qualities peculiar to them.

   — The contested decision has not placed the shareholder applicants in a different legal position than the rest of shareholders or Trasta Komercbanka itself.

3. Third plea in law, alleging that the shareholder applicants had no *locus standi*, given that the contested decision was not of direct concern to them.

   The third plea in law is based on the following Arguments:

   — The shareholder applicants are not directly concerned by the contested decision as their rights have not been substantially affected within the meaning of the case law.

   — A mere economic loss as a result of the contested decision does not lead to the conclusion that their legal position (as opposed to that of Trasta Komercbanka) has been affected, irrespectively of the intensity of those economic effects.

Request for a preliminary ruling from the Areios Pagos (Greece) lodged on 27 November 2017 — Ellinika Nafpigeia AE v Panagiotis Anagnostopoulos and Others

(Case C-664/17)

(2018/C 032/24)

Language of the case: Greek

Referring court

Areios Pagos

Parties to the main proceedings

Appellant: Ellinika Nafpigeia AE

Respondents: Panagiotis Anagnostopoulos and Others

Questions referred

1. On the true meaning of Article 1 of Directive 98/50/EC ([1]) and in order to establish whether or not there is a transfer of an undertaking, business or part of an undertaking or business, is 'economic entity' to be understood as a completely self-sufficient production unit which is capable of operating to attain its economic object without in any way seeking (purchasing, borrowing, leasing and so forth) factors of production (raw materials, manpower, machinery, components of the finished product, support services, financial resources and so forth) from third parties? Or, on the contrary, does it suffice, in order to qualify as an 'economic entity', that the subject matter of the activity is distinct, that that subject matter is in fact able to constitute the object of an economic endeavour and that it is feasible to effectively organise the factors of production (raw materials, machinery and other equipment, manpower and support services) to attain the object in question, irrespective of whether or not the new operator of the activity also seeks outside factors of production, or fails to attain the object in a particular instance?

2. On the true meaning of Article 1 of Directive 98/50/EC, is the existence of a transfer precluded where the transferor or transferee or both of them have in view not only the successful continuance of the activity under the new operator, but also its future cessation for the purpose of winding up the undertaking in question?

([1]) Council Directive 98/50/EC of 29 June 1998 amending Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ 1998 L 201, p. 88).

GENERAL COURT

Judgment of the General Court of 7 December 2017 — Missir Mamachi di Lusignano and Others v Commission

(Case T-401/11) ([1])

(Appeal — Civil service — Officials — Murder of an official and his wife — Rule of correspondence between request, complaint and action regarding compensation — Obligation to ensure the security of staff serving the Union — Causal link — Material damage — Joint and several liability — Consideration of the benefits laid down in the Staff Regulations — Non-material damage — Liability of an institution for the non-material damage of a deceased official — Liability of an institution for the non-material damage of the beneficiaries of a deceased official)

(2018/C 032/25)

Language of the case: Italian

Parties

Appellants: Stefano Missir Mamachi di Lusignano (Shanghai, China) and the 6 other applicants whose names are listed in the Annex to the judgment (represented by: F. Di Gianni, G. Coppo and A. Scalini, lawyers)

Other party to the proceedings: European Commission (represented by: G. Gattinara and D. Martin, acting as Agents)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (First Chamber) of 12 May 2011, *Missir Mamachi di Lusignano* v *Commission* (F-50/09, EU:F:2011:55), and asking for annulment of that judgment.

Operative part of the judgment

The Court:

1) *Quashes the judgment of 12 May 2011, Missir Mamachi di Lusignano v Commission (F-50/09), in so far as the European Union Civil Service Tribunal has upheld the plea of inadmissibility raised by the European Commission against the claim for compensation for the non-material damage suffered by Mr Carlo Missir Mamachi di Lusignano, Ms Giustina Missir Mamachi di Lusignano, Mr Filiberto Missir Mamachi di Lusignano and Mr Tommaso Missir Mamachi di Lusignano, the latter two represented by Ms Anne Sintobin;*

2) *Quashes the judgment of 12 May 2011, Missir Mamachi di Lusignano v Commission (F-50/09), in so far as the Civil Service Tribunal has upheld the plea of inadmissibility raised by the Commission against the claim for compensation for the non-material damage suffered by Mr Livio Missir Mamachi di Lusignano;*

3) *Quashes the judgment of 12 May 2011, Missir Mamachi di Lusignano v Commission (F-50/09), in so far as the Civil Service Tribunal has limited the Commission's liability to 40 % of the material damage suffered by Mr Carlo Missir Mamachi di Lusignano, Ms Giustina Missir Mamachi di Lusignano, Mr Filiberto Missir Mamachi di Lusignano and Mr Tommaso Missir Mamachi di Lusignano, the latter two being represented by Ms Sintobin;*

4) *Dismisses the appeal as to the remainder;*

5) *Orders the Commission jointly and severally to pay an amount of EUR 3 million, less statutory benefits considered to be part of that amount paid or payable to Mr Carlo Missir Mamachi di Lusignano, Ms Giustina Missir Mamachi di Lusignano Mr Filiberto Missir Mamachi di Lusignano and Mr Tommaso Missir Mamachi di Lusignano, the latter two being represented by Ms Sintobin, in respect of the material damage suffered by them;*

6) *Orders the Commission jointly and severally to pay Mr Carlo Missir Mamachi di Lusignano an amount of EUR 100 000 in respect of the non-material damage suffered by him;*

7) *Orders the Commission jointly and severally to pay Ms Giustina Missir Mamachi di Lusignano an amount of EUR 100 000 in respect of the non-material damage suffered by her;*

8) *Orders the Commission jointly and severally to pay Mr Tommaso Missir Mamachi di Lusignano, represented by Ms Sintobin, an amount of EUR 100 000 in respect of the non-material damage suffered by him;*

9) *Orders the Commission jointly and severally to pay Mr Filiberto Missir Mamachi di Lusignano, represented by Ms Sintobin, an amount of EUR 100 000 in respect of the non-material damage suffered by him;*

10) *Orders the Commission jointly and severally to pay a total amount of EUR 50 000 to Mr Stefano Missir Mamachi di Lusignano and to the other applicants whose names appear in the Annex, in their capacity as heirs of Mr Livio Missir Mamachi di Lusignano, in respect of the non-material damage suffered by them;*

11) *Orders that the compensation referred to in paragraphs 6 to 10 above shall be increased by default interest, from the delivery of the present judgment until payment in full, at the rate fixed by the European Central Bank for its main refinancing operations, plus two percentage points;*

12) *Dismisses the appeal as to the remainder;*

13) *Orders the Commission to pay the costs relating to the appeal proceedings;*

14) *Orders the Commission to pay the costs relating to the proceedings at first instance.*

([1]) OJ C 282, 24.9.2011.

Judgment of the General Court of 11 December 2017 — JT v EUIPO — Carrasco Pirard (QUILAPAYÚN)

(Case T-249/15) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark QUILAPAYÚN — Relative ground for refusal — Well-known mark — Article 8(2)(c) of Regulation (EC) No 207/2009 (now Article 8(2)(c) of Regulation (EU) 2017/1001) — Proprietor of the mark)

(2018/C 032/26)

Language of the case: Spanish

Parties

Applicant: JT (represented by: A. Mena Valenzuela, lawyer)

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

Other parties to the proceedings before the Board of Appeal of EUIPO: Eduardo Carrasco Pirard (Santiago, Chili) and the 7 other parties to the proceedings before the Board of Appeal of EUIPO whose names are listed in the Annex to the judgment

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 13 March 2015 (Case R 354/2014-2), relating to opposition proceedings between, on the one hand, JT, and, on the other, Mr Carrasco Pirard and the other parties to the proceedings before the Board of Appeal whose names are listed in the Annex.

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 13 March 2015 (Case R 354/2014-2);*

2. *Dismisses the remaining heads of claim in the application;*

3. *Orders each party to bear its own costs.*

(1) OJ C 337, 12.10.2015.

Judgment of the General Court of 12 December 2017 — Hochmann Marketing v EUIPO — BitTorrent (bittorrent)

(Case T-771/15) (1)

(EU trade mark — Revocation proceedings — EU word mark bittorrent — Article 76(1) and (2) of Regulation (EC) No 207/2009 (now Article 95(1) and (2) of Regulation (EU) 2017/1001) — No account taken of evidence submitted before the Cancellation Division — Article 51(1)(a) of Regulation No 207/2009 (now Article 58(1)(a) of Regulation 2017/1001))

(2018/C 032/27)

Language of the case: English

Parties

Applicant: Hochmann Marketing GmbH, formerly Bittorrent Marketing GmbH (Neu-Isenburg, Germany), (represented by: C. Hoppe, M. Terhaag and C. Schwarz, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: BitTorrent, Inc. (San Francisco, California, United States) (represented by: M. Kinkeldey, S. Clotten, S. Brandstätter and C. Schmitt, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 31 August 2015 (Case R 2275/2013-5) concerning revocation proceedings between BitTorrent and Bittorrent Marketing.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hochmann Marketing GmbH, formerly Bittorrent Marketing GmbH, to pay the costs.*

(1) OJ C 191, 30.5.2016.

Judgment of the General Court of 12 December 2017 — Sony Computer Entertainment Europe v EUIPO — Vieta Audio (Vita)

(Case T-35/16) (1)

(EU trade mark — Revocation proceedings — EU word mark Vita — Genuine use of the mark — Article 51(1)(a) of Regulation (EC) No 207/2009 (now Article 58(1)(a) of Regulation (EU) 2017/1001) — Use in connection with the goods in question — Obligation to state reasons)

(2018/C 032/28)

Language of the case: English

Parties

Applicant: Sony Computer Entertainment Europe Ltd (London, United Kingdom) (represented by: S. Malynicz QC)

Defendant: European Union Intellectual Property Office (represented by: H. Kunz, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Vieta Audio, SA (Barcelona, Spain) (represented by I. Barroso Sánchez-Lafuente, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 12 November 2015 (Case R 2232/2014-5), relating to revocation proceedings between Vieta Audio and Sony Computer Entertainment Europe.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 12 November 2015 (Case R 2232/2014-5), relating to revocation proceedings between Vieta Audio, SA and Sony Computer Entertainment Europe Ltd;*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Sony Computer Entertainment Europe;*

3. *Orders Vieta Audio to bear its own costs.*

([1]) OJ C 106, 21.3.2016.

Judgment of the General Court of 7 December 2017 — Coca-Cola v EUIPO — Mitico (Master)

(Case T-61/16) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark Master — Earlier European Union figurative marks Coca-Cola and earlier national figurative mark C — Relative ground for refusal — Unfair advantage taken of the reputation of earlier marks — Evidence relating to the commercial use, outside the European Union, of a sign comprising the mark applied for — Logical inferences — Decision taken following the annulment by the General Court of an earlier decision — Article 8(5) and Article 65(6) of Regulation (EC) No 207/2009 (now Article 8(5) and Article 72(6) of Regulation (EU) 2017/1001))

(2018/C 032/29)

Language of the case: English

Parties

Applicant: The Coca-Cola Company (Atlanta, Georgia, United States) (represented by: S. Malynicz, QC, S. Baran, barrister, D. Stone and A. Dykes, Solicitors)

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, intervener before the General Court: Modern Industrial & Trading Investment Co. Ltd (Mitico) (Damas, Syria) (represented by: A.-E. Malamis, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 2 December 2015 (Case R 1251/2015-4), relating to opposition proceedings between The Coca-Cola Company and Mitico.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 2 December 2015 (Case R 1251/2015-4);*

2. *Orders EUIPO to bear its own costs and to pay those incurred by The Coca-Cola Company, including the costs of the proceedings before the Board of Appeal of EUIPO;*

3. *Orders Modern Industrial & Trading Investment Co. Ltd (Mitico) to bear its own costs.*

(1) OJ C 111, 29.3.2016.

Judgment of the General Court of 6 December 2017 — Tulliallan Burlington v EUIPO — Burlington Fashion (Burlington)

(Case T-120/16) (1)

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark Burlington — Earlier national word marks BURLINGTON and BURLINGTON ARCADE — Earlier EU and national figurative marks BURLINGTON ARCADE — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Use in the course of trade of a sign of more than mere local significance — Article 8(4) of Regulation No 207/2009 (now Article 8(4) of Regulation 2017/1001) — Unfair advantage taken of the distinctive character or the repute of the earlier trade marks — Article 8(5) of Regulation No 207/2009 (now Article 8(5) of Regulation 2017/1001))

(2018/C 032/30)

Language of the case: English

Parties

Applicant: Tulliallan Burlington Ltd (St Helier, Jersey) (represented by: A. Norris, Barrister)

Defendant: European Union Intellectual Property Office (represented by: M. Fischer, Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Burlington Fashion GmbH (Schmallenberg, Germany) (represented by: A. Parr, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 11 January 2016 (Case R 94/2014-4), relating to opposition proceedings between Tulliallan Burlington and Burlington Fashion.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Tulliallan Burlington Ltd to pay the costs.*

(1) OJ C 175, 17.5.2016.

Judgment of the General Court of 6 December 2017 — Tulliallan Burlington v EUIPO — Burlington Fashion (BURLINGTON THE ORIGINAL)

(Case T-121/16) ([1])

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark BURLINGTON THE ORIGINAL — Earlier national word marks BURLINGTON and BURLINGTON ARCADE — Earlier EU and national figurative marks BURLINGTON ARCADE — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Use in the course of trade of a sign of more than mere local significance — Article 8(4) of Regulation No 207/2009 (now Article 8(4) of Regulation 2017/1001) — Unfair advantage taken of the distinctive character or the repute of the earlier trade marks — Article 8(5) of Regulation No 207/2009 (now Article 8(5) of Regulation 2017/1001))

(2018/C 032/31)

Language of the case: English

Parties

Applicant: Tulliallan Burlington Ltd (St Helier, Jersey) (represented by: A. Norris, Barrister)

Defendant: European Union Intellectual Property Office (represented by: M. Fischer, Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Burlington Fashion GmbH (Schmallenberg, Germany) (represented by: A. Parr, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 11 January 2016 (Case R 2501/2013-4), relating to opposition proceedings between Tulliallan Burlington and Burlington Fashion.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Tulliallan Burlington Ltd to pay the costs.*

([1]) OJ C 175, 17.5.2016.

Judgment of the General Court of 6 December 2017 — Tulliallan Burlington v EUIPO — Burlington Fashion (Burlington)

(Case T-122/16) ([1])

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark Burlington — Earlier national word marks BURLINGTON and BURLINGTON ARCADE — Earlier EU and national figurative marks BURLINGTON ARCADE — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Use in the course of trade of a sign of more than mere local significance — Article 8(4) of Regulation No 207/2009 (now Article 8(4) of Regulation 2017/1001) — Unfair advantage taken of the distinctive character or the repute of the earlier trade marks — Article 8(5) of Regulation No 207/2009 (now Article 8(5) of Regulation 2017/1001))

(2018/C 032/32)

Language of the case: English

Parties

Applicant: Tulliallan Burlington Ltd (St Helier, Jersey) (represented by: A. Norris, Barrister)

Defendant: European Union Intellectual Property Office (represented by: M. Fischer, Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Burlington Fashion GmbH (Schmallenberg, Germany) (represented by: A. Parr, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 11 January 2016 (Case R 2409/2013-4), relating to opposition proceedings between Tulliallan Burlington and Burlington Fashion.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Tulliallan Burlington Ltd to pay the costs.*

(1) OJ C 175, 17.5.2016.

Judgment of the General Court of 6 December 2017 — Tulliallan Burlington v EUIPO — Burlington Fashion (BURLINGTON)

(Case T-123/16) (1)

(EU trade mark — Opposition proceedings — International registration designating the European Union — Word mark BURLINGTON — Earlier national word marks BURLINGTON and BURLINGTON ARCADE — Earlier EU and national figurative marks BURLINGTON ARCADE — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Use in the course of trade of a sign of more than mere local significance — Article 8(4) of Regulation No 207/2009 (now Article 8(4) of Regulation 2017/1001) — Unfair advantage taken of the distinctive character or the repute of the earlier trade marks — Article 8(5) of Regulation No 207/2009 (now Article 8(5) of Regulation 2017/1001))

(2018/C 032/33)

Language of the case: English

Parties

Applicant: Tulliallan Burlington Ltd (St Helier, Jersey) (represented by: A. Norris, Barrister)

Defendant: European Union Intellectual Property Office (represented by: M. Fischer, Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Burlington Fashion GmbH (Schmallenberg, Germany) (represented by: A. Parr, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 11 January 2016 (Case R 1635/2013-4), relating to opposition proceedings between Tulliallan Burlington and Burlington Fashion.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Tulliallan Burlington Ltd to pay the costs.*

(1) OJ C 175, 17.5.2016.

Judgment of the General Court of 11 December 2017 — Léon Van Parys v Commission

(Case T-125/16) ([1])

(Customs union — Imports of bananas from Equador — Post-clearance recovery of import duties — Application for the remission of import duties — Decision adopted following the annulment by the General Court of an earlier decision — Reasonable time)

(2018/C 032/34)

Language of the case: Dutch

Parties

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

Defendant: European Commission (represented by: A. Caeiros, B.-R. Killmann and E. Manhaeve, acting as Agents)

Re:

Application, first, pursuant to Article 263 TFEU, for annulment of Commission Decision C(2016) 95 final of 20 January 2016 finding that post-clearance entry in the accounts of import duties is justified and that remission of those duties is justified with regard to a debtor and is in part justified in the particular case of another debtor but in another part not justified with regard to that particular debtor, and modifying Commission Decision C(2010) 2858 of 6 May 2010, and, second, for a declaration that Article 909 of 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) had effect with regard to the applicant following the judgment of 19 March 2013, *Firma Van Parys* v *Commission* (T-324/10, EU:T:2013:136).

Operative part of the judgment

The Court:

1. *Annuls Article 1(4) of Commission Decision C(2016) 95 final of 20 January 2016 finding that post-clearance entry in the accounts of import duties is justified and that remission of those duties is justified with regard to a debtor and is in part justified in the particular case of another debtor but in another part not justified with regard to that particular debtor, and modifying Commission Decision C(2010) 2858 of 6 May 2010;*

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

3. *Orders the European Commission to bear its own costs and to pay those incurred by Firma Léon Van Parys NV.*

([1]) OJ C 175, 17.5.2016.

Judgment of the General Court of 5 December 2017 — Spadafora v Commission

(Case T-250/16) ([1])

(Appeal — Civil Service — Officials — Dismissal of the action at first instance as manifestly inadmissible and manifestly unfounded — Application to have that order set aside — Post of Head of the Legal Advice Unit of OLAF — Selection procedure — Pre-selection panel — Not included in the restricted list of proposed candidates for a final interview with the Appointing Authority — Impartiality — Claim for compensation — Loss of chance — Whether the state of the proceedings permits final judgment to be given)

(2018/C 032/35)

Language of the case: Italian

Parties

Appellant: Sergio Spadafora (Brussels, Belgium) (represented by: G. Belotti, lawyer)

Other party to the proceedings: Commission (represented initially by: G. Gattinara and C. Berardis-Kayser, and subsequently by: G. Gattinara and L. Radu Bouyon, acting as Agents)

Re:

Appeal lodged against the order of the European Union Civil Service Tribunal (Third Chamber) of 7 April 2016, *Spadafora* v *Commission* (F-44/15, EU:F:2016:69), seeking to have that order set aside.

Operative part of the judgment

The Court:

1. *Sets aside the order of the European Union Civil Service Tribunal (Third Chamber) of 7 April 2016, Spadafora v Commission (F-44/15), with the exception of the dismissal as manifestly inadmissible of the application for a declaration that, by virtue of the annulment of the decision of 30 June 2014, by which the Director General of the European Anti-Fraud Office appointed Ms D to the post of Head of the Legal Advice Unit of OLAF's Investigation Support Directorate and of Decision Ares(2015) 43686 of 5 January 2015 of Ms K. Georgieva, Vice-President of the European Commission, rejecting the applicant's claim (R/994/14), the selection procedure was vitiated by illegality from the moment that the illegality occurred;*

2. *Dismisses the remainder of the appeal;*

3. *Annuls the decision of 30 June 2014, by which the Director General of the European Anti-Fraud Office appointed Ms D to the post of Head of the Legal Advice Unit of OLAF's Investigation Support Directorate;*

4. *Annuls Decision Ares(2015) 43686 of 5 January 2015 of Ms K. Georgieva, Vice-President of the European Commission, rejecting the applicant's claim (R/994/14);*

5. *Dismisses the action at first instance insofar as Mr Sergio Spadafora seeks compensation for the material loss resulting from the loss of chance to be selected for the post of Head of the Legal Advice Unit of OLAF's Investigation Support Directorate;*

6. *Orders the Commission to pay the costs of the appeal proceedings and those of the proceedings at first instance.*

([1]) OJ C 251, 11.7.2016.

Judgment of the General Court of 7 December 2017 — Colgate-Palmolive v EUIPO (360º)

(Case T-332/16) ([1])

(EU trade mark — Application for the EU word mark 360º — Absolute grounds for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001) — Distinctive character acquired through use — Article 7(3) of Regulation No 207/2009 (now Article 7(3) of Regulation 2017/1001))

(2018/C 032/36)

Language of the case: English

Parties

Applicant: Colgate-Palmolive Co. (New York, New York, United States) (represented by: M. Zintler and A. Stolz, lawyers)

Defendant: European Union Intellectual Property Office (represented by: M. Rajh, acting as Agent)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 14 April 2016 (Case R 2288/2015-4), concerning an application for registration of the word sign 360º as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Colgate-Palmolive Co. to pay the costs.*

(1) OJ C 296, 16.8.2016.

Judgment of the General Court of 7 December 2017 — Colgate-Palmolive v EUIPO (360°)

(Case T-333/16) (1)

(EU trade mark — Application for the EU figurative mark 360° — Absolute grounds for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001) — Distinctive character acquired through use — Article 7(3) of Regulation No 207/2009 (now Article 7(3) of Regulation 2017/1001))

(2018/C 032/37)

Language of the case: English

Parties

Applicant: Colgate-Palmolive Co. (New York, New York, United States) (represented by: M. Zintler and A. Stolz, lawyers)

Defendant: European Union Intellectual Property Office (represented by: M. Rajh, acting as Agent)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 14 April 2016 (Case R 2287/2015-4), concerning an application for registration of the figurative sign 360° as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Colgate-Palmolive Co. to pay the costs.*

(1) OJ C 296, 16.8.2016.

Judgment of the General Court of 7 December 2017 — sheepworld v EUIPO (Alles wird gut)

(Case T-622/16) (1)

(EU trade mark — Application for the EU word mark Alles wird gut — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2018/C 032/38)

Language of the case: German

Parties

Applicant: sheepworld AG (Ursensollen, Germany) (represented by: S. von Rüden, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Schifko, acting as Agent)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 16 June 2016 (Case R 212/2016-4) concerning an application for registration of the word sign Alles wird gut as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders sheepworld AG to pay the costs.*

(1) OJ C 383, 17.10.2016.

Judgment of the General Court of 5 December 2017 — Tuerck v Commission

(Case T-728/16) (1)

(Civil service — Officials — Pensions — Transfer of national pension rights — Capital appreciation between the date of the application for a transfer and the actual date of the transfer)

(2018/C 032/39)

Language of the case: French

Parties

Applicant: Sabine Tuerck (Woluwe-Saint-Pierre, Belgium) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission (represented by: G. Gattinara and L. Radu Bouyon, acting as Agents)

Re:

Application under Article 270 TFEU seeking annulment of the Commission's decision of 10 December 2015 confirming the transfer to the European Union pension scheme of the pension rights acquired by the applicant prior to her entering the service of the European Union.

Operative part of the judgment

The Court:

1. *Annuls the decision of the European Commission of 10 December 2015 confirming the transfer to the European Union pension scheme of the pension rights acquired by Ms Sabine Tuerck prior to her entering the service of the European Union;*

2. *Orders the Commission to pay the costs.*

(1) OJ C 475, 19.12.2016.

Judgment of the General Court of 12 December 2017 — For Tune v EUIPO — Simplicity trade (opus AETERNATUM)

(Case T-815/16) (1)

(EU trade mark — Opposition proceedings — Application for registration of the EU figurative mark opus AETERNATUM — Earlier EU word mark OPUS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2018/C 032/40)

Language of the case: English

Parties

Applicant: For Tune sp. z o.o. (Warsaw, Poland) (represented by: K. Popławska, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard-Monguiral, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Simplicity trade GmbH (Oelde, Germany)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 14 September 2016 (Case R 152/2016-2), relating to opposition proceedings between Simplicity trade and For Tune.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders For Tune sp. z o.o. to pay the costs.*

([1]) OJ C 14, 16.1.2017.

Judgment of the General Court of 5 December 2017 — Xiaomi v EUIPO — Apple (MI PAD)

(Case T-893/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark MI PAD — Earlier EU word mark IPAD — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Likelihood of confusion — Similarity of the signs — Similarity of the goods and services)

(2018/C 032/41)

Language of the case: English

Parties

Applicant: Xiaomi, Inc. (Beijing, China) (represented by: T. Raab and C. Tenkhoff, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Apple Inc. (Cupertino, California, United States) (represented by: J. Olsen and P. Andreottola, Solicitors, and by G. Tritton, Barrister)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 22 September 2016 (Case R 363/2016-1), relating to opposition proceedings between Apple and Xiaomi.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Xiaomi, Inc. to pay the costs.*

([1]) OJ C 46, 13.2.2017.

Order of the General Court of 26 November 2017 — Federcaccia Toscana and Others v Commission

(Case T-562/15) ([1])

(Environment — Conservation of wild birds — Species which may be hunted — Conditions to be complied with by national laws on hunting — Harmonisation of the criteria for the application of Article 7(4) of Directive 2009/147/EC — Closed period for hunting in Tuscany)

(2018/C 032/42)

Language of the case: Italian

Parties

Applicants: Federcaccia Toscana (Florence, Italy) and the five other applicants whose names are set out in the annex to the order (represented by: A. Bruni, lawyer)

Defendant: European Commission (represented by: G. Gattinara and C. Hermes, acting as Agents)

Re:

Application based on Article 265 TFEU seeking a declaration that the Commission unlawfully failed to update certain Italian data in the document on key concepts, established by the ORNIS Committee, which is provided for in Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7); application based on Article 263 TFEU seeking annulment of the Commission's letter of 6 October 2014 stating that the extension in Italy of the hunting season for certain species of bird is incompatible with EU law; and application based on Article 268 TFEU seeking compensation for the damage allegedly suffered by the applicants as a result of the Commission's failure to update the Italian data.

Operative part of the order

1. *The action is dismissed.*

2. *Federcaccia Toscana and the other applicants whose names are set out in the annex shall pay the costs.*

([1]) OJ C 381, 16.11.2015.

Order of the General Court of 20 November 2017 — BikeWorld v Commission

(Case T-702/15) ([1])

(Action for annulment — Representation by a lawyer who is not a third party — Inadmissibility)

(2018/C 032/43)

Language of the case: German

Parties

Applicant: BikeWorld GmbH (Sankt Ingbert, Germany) (represented by: J. Jovy, lawyer)

Defendant: European Commission (represented by: L. Flynn, B. Stromsky and T. Maxian Rusche, Agents)

Re:

Application under Article 263 TFEU seeking the annulment in part of Commission Decision (EU) 2016/151 of 1 October 2014 on the State aid SA.31550 (2012/C) (ex 2012/NN) implemented by Germany for Nürburgring (OJ 2016 L 34, p. 1).

Operative part of the order

1. *The action is dismissed as being inadmissible.*

2. *BikeWorld GmbH shall pay the costs.*

([1]) OJ C 68, 22.2.2016.

Order of the General Court of 23 November 2017 — Nf Nails In Vogue v EUIPO — Nails & Beauty Factory (NAILS FACTORY)

(Case T-886/16) ([1])

(EU trade mark — Opposition proceedings — Revocation of the contested decision — Action which has become devoid of purpose — No need to adjudicate)

(2018/C 032/44)

Language of the case: English

Parties

Applicant: Nf Nails In Vogue, SL (Arganda del Rey, Spain) (represented by: L. Jáudenes Sánchez, lawyer)

Defendant: European Union Intellectual Property Office (represented by: D. Gája and E. Scheffer, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: Nails & Beauty Factory GmbH, formerly Nails & Beauty Vertriebs GmbH (Kiel, Germany)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 5 October 2016 (Case R 202/2016-1), relating to opposition proceedings between Nf Nails In Vogue and Nails & Beauty Vertriebs.

Operative part of the order

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

2. *The European Union Intellectual Property Office (EUIPO) is ordered to bear its own costs and to pay those incurred by Nf Nails In Vogue, SL.*

([1]) OJ C 63, 27.2.2017.

Action brought on 29 November 2017 — L v Parliament

(Case T-91/17)

(2018/C 032/45)

Language of the case: English

Parties

Applicant: L (represented by: I. Coutant Peyre, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the decision of the appointing authority of the European Parliament of 31/08/2016, refusing to accept two medical certificates produced by the applicant in order to justify certain absences from work and accordingly declaring the absence in question to be unauthorised.

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 breach of the principles under European Union and Lithuanian law relating to the protection of whistleblowers.

2. Second plea in law, alleging a breach by the Parliament of its duty of care and of the principle of good administration.

Action brought on 7 November 2017 — Wattiau v Parliament

(Case T-737/17)

(2018/C 032/46)

Language of the case: French

Parties

Applicant: Francis Wattiau (Bridel, Luxembourg) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— Annul the decision to make him liable for the amount of EUR 843,01, included in the breakdown of expenses No 244 from the settlements office;

— Annul, where necessary, the decision of the Appointing Authority of 2 August 2017;

— Order the Parliament to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant raised an objection of illegality against the agreement concluded between the European Union and the Federation of Luxembourg Hospitals increasing by 15 % the medical expenses incurred by the members of the Joint Sickness Insurance Scheme (JSIS) in Luxembourg. That objection of illegality is based on two pleas in law.

1. First plea in law, alleging breach of the principle of non-discrimination on grounds of nationality and Articles 12 and 14 of the Protocol on privileges and immunities.

2. Second plea in law, alleging breach of the principle of sound financial management set out in Article 30 of Regulation No 966/2012 and Article 43 of the Joint Rules on Sickness Insurance for Officials of the European Union.

Action brought on 2 November 2017 — DEI v European Commission

(Case T-740/17)

(2018/C 032/47)

Language of the case: Greek

Parties

Applicant: Dimosia Epicheirisi Ilektrismou A.E. (DEI) (Athens, Greece) (represented by: E. Bourtzalas, E. Salaka, C. Synodinos, C. Tagaras and D. Waelbroeck, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— Annul the decision of the Commission of 14 August 2017 (C(2017) 5622 final) in Case SA.38101 (2015/NN)(ex 2013/CP) — Greece: Alleged State Aid to Aluminium S.A. in the form of electricity tariffs below cost following Arbitration Decision, in so far as it cancels the Commission's acts of 12 June 2014 and 25 March 2015;

— Annul the decision of the Commission of 14 August 2017 (C(2017) 5622 final) in Case SA.38101 (2015/NN)(ex 2013/CP), in so far as it holds that no State aid was granted to Aluminium and, consequently, that the Commission was not required to initiate the formal investigation procedure provided for in Article 108(2) TFEU;

— Annul the decision of the Commission of 14 August 2017 (C(2017) 5622 final) in Case SA.38101 (2015/NN)(ex 2013/CP), in so far as it holds that DEI's complaint, concerning the State aid which was granted on the basis of the grounds of Decision 346/2012 of the RAE [the Greek Energy Regulator], had become without object as a result of Decision 1/2013 of the Arbitration Tribunal in the context of the permanent arbitration of the RAE; and

— order the Commission to pay DEI's costs.

Pleas in law and main arguments

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

1. Manifest error of law in the interpretation of the judgment of the Court of Justice in Case C-228/16 P and contradiction of the decision in that case.

2. Inadequate execution of the Commission's obligations arising from Article 24(2) of Regulation 2015/1589 ([1]) and infringement of that article and of the right to be heard, and infringement of the Charter of Fundamental Rights of the European Union.

3. Absence of a sufficient statement of reasons, contradiction and breach of the obligation to examine all relevant matters of fact and law with respect to the finding that the Arbitration Agreement, as a consequence of which the abovementioned arbitration Decision 1/2013 was issued, set 'clear and objective parameters' which 'limited the discretion of the arbitrators' and had as a 'logical consequence' the finally determined electricity tariff.

4. Manifest error of law in the interpretation and application of the principle of the prudent private investor and of Articles 107(1) and 108(2) TFEU, as concerns the finding that the electricity tariff determined by the decision of the Arbitration Tribunal is the 'logical consequence of properly defined parameters in the Arbitration Agreement'.

5. Manifest error of law in the interpretation and application of Articles 107 and 108 TFEU, with respect to the finding that the Commission did not have to engage in complex economic assessments and a manifest error of law and a manifest error of assessment with respect to the factual circumstances in so far as the Commission failed to examine crucial issues with respect to finding whether or not there was State Aid.

6. Manifest error of law in the application of Articles 107(1) and 108(2) TFEU, and a manifest error of assessment with respect to the factual circumstances as concerns the application of the test of the prudent private market economy operator.

7. Manifest error of law in the interpretation and application of Article 107(1) TFEU, infringement of the obligation to state sufficient reasons and a manifest error of assessment with respect to the factual circumstances as regards the decision by the Commission not to further investigate the complaint made by DEI in 2012, pursuant to Article 108 (2) TFEU, on the basis of the finding that that complaint 'had become without object' following the issuing of Decision 1/2013 of the Arbitration Tribunal.

([1]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015L 248, p. 9).

Action brought on 13 November 2017 — TrekStor v EUIPO — Beats Electronics (i.Beat jump)

(Case T-746/17)

(2018/C 032/48)

Language in which the application was lodged: English

Parties

Applicant: TrekStor Ltd (Hong-Kong, China) (represented by: O. Spieker, M. Alber, A. Schönfleisch, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Beats Electronics LLC (Culver City, California, United States)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'i.Beat jump' EU trade mark No 4 729 075

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 12 September 2017 in Case R 2236/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision insofar as it upholds the Cancellation Applicant's application for revocation and revokes the Applicant's rights in respect of European Union trade mark No 4 729 075

— dismiss the Cancellation Applicant's application for revocation;

— order EUIPO to pay the costs of the proceedings including the costs necessarily incurred by the Applicant before the Board of Appeal of the European Union Intellectual Property Office (EUIPO).

Pleas in law

— Infringement of Article 58(1)(a) of Regulation No 2017/1001;

— Infringement of Article 18(1)(a) of Regulation No 2017/1001.

Action brought on 15 November 2017 — UPF v Commission

(Case T-747/17)

(2018/C 032/49)

Language of the case: French

Parties

Applicant: Union des Ports de France — UPF (Paris, France) (represented by: C. Vannini and E. Moraïtou, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action against decision C(2017) 5176 final of the European Commission of 27 July 2017 on aid scheme SA.38398 (2016/C, ex 2015/E) implemented by France ('the contested decision'), the applicant relies on five pleas in law.

1. First plea in law, alleging that the Commission erred in law by classifying the tax measure in its entirety as State aid, disregarding the criterion relating to the economic nature of the activity of the French ports. In that regard, the applicant considers that, by finding that the tax exemption in favour of French ports constitutes a State aid within the meaning of Article 107(1) of the TFEU, without specifying that the classification of aid is limited to the economic activities only of the ports, the Commission, in principle, vitiated its decision by an error of law.

2. Second plea in law, alleging that the Commission erred in law in relation to the assessment of the economic nature of the activities carried out by the French ports. The applicant claims that the Commission also erred in law in its analysis of the economic nature of the activities carried out by the French ports, in two respects:

   — In the first place, in that it totally failed to address in the contested decision some of the activities carried out by the French ports;

   — in the second place, in that, with regard to several other activities of the French ports, it merely reiterated the general principles derived from the case-law of the ECJ concerning public financing of port infrastructures without reaching a conclusion as to whether or not they are economic in nature although that is, it is claimed, the criterion for applying the State aid rules.

3. Third plea in law, alleging an error of law and inadequate reasoning as regards the conditions relating to the distortion of competition and the effect on trade between Member States, insofar as the Commission was wrong to consider that the tax exemption was liable to give rise to distortions of competition and to have an effect on trade between the Member States, as regards French ports in general and, more specifically, island ports and overseas ports. According to the applicant, the contested decision is vitiated by inadequate reasoning in so far as the Commission assumed, without substantiating its position, that those conditions were satisfied in the present case.

4. Fourth plea in law, alleging an error of law in the conduct of the existing aid review procedure and infringement of Article 108(1) and (2) TFEU, combined with the principle of proportionality, in so far as, first, by requiring that the French authorities provide evidence of the compatibility with the internal market of the exemption from corporation tax in favour of the French ports, the Commission reversed the burden of proof and acted as if it had received an application for approval of a new aid scheme. Secondly, by requiring the French authorities to simply abolish the exemption scheme without demonstrating that no modification to that measure could make it compatible with the EU rules on State aid, the Commission infringed Article 108(1) and (2) TFEU, Article 2 of Regulation No 2015/1589 and the principle of proportionality.

5. Fifth plea in law, alleging breach of the principle of sound administration in that the fact that the Commission requires the abolition of the exemption scheme while leaving in place port aid schemes in other Member States does not ensure a level playing field between the various European ports but, on the contrary, leads to further distortions of competition, in direct breach of the role conferred on the Commission as guarantor of the proper functioning of the internal market. The Commission therefore infringed the principle of impartiality which is the necessary corollary of the principle of good administration.

Action brought on 17 November 2017 — Commune de Fessenheim and Others v Commission

(Case T-751/17)

(2018/C 032/50)

Language of the case: French

Parties

Applicants: Commune de Fessenheim (Fessenheim, France), Communauté de communes Pays Rhin-Brisach (Volgelsheim, France), Conseil départemental du Haut-Rhin (Colmar, France) et Conseil régional Grand Est Alsace Champagne-Ardenne Lorraine (Strasbourg, France) (represented by: G. de Rubercy, lawyer)

Defendant: European Commission

Form of order sought

— Annul Decision (C(2017 7119 FINAL) of the Secretarial-General of the European Commission dated 18 October 2017 by which communication of the decision of the European Commission Directorate-General for Competition notified to the French authorities on 22 March 2017, concerning the protocol for indemnifying EDF in respect of the closure of the nuclear power plant of Fessenheim was refused;

— Order the European Commission to communicate that letter of 22 March 2017 to the applicants within one week from the judgment to be delivered by the General Court;

— Order the European Commission to pay all 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 the final subparagraph of Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), since there is an overriding public interest justifying disclosure of the information at issue.

2. Second plea in law, alleging infringement of Article 42 of the Charter of Fundamental Rights of the European Union concerning the right of access to documents.

3. Third plea in law, alleging infringement of Article 47 of the Charter of Fundamental Rights of the European Union concerning the right to an effective remedy.

Action brought on 20 November 2017 — Federal Republic of Germany v ECHA

(Case T-755/17)

(2018/C 032/51)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: D. Klebs and T. Henze, lawyers)

Defendant: European Chemicals Agency

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Board of Appeal of the European Chemicals Agency of 8 September 2017 (Case No A-026-2015) to the extent to which the Board of Appeal, in regard to the decision of the Member State Committee of 1 October 2015 concerning the substance 1,4-Benzenediamine, N, N'-mixed phenyl- and tolyl derivatives ('BENPAT') CAS No 68 953-84-4 (EC No 273-227-8):

  — partially annulled that decision in so far as it provided for the identification of metabolites by the registrants during the OECD TG 309 study;

  — partially annulled that decision in so far as it provided for a study to be carried out under OECD TG 308;

  — ordered that the statement on bioaccumulation in the statement of reasons be removed from the decision;

— and order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant puts forward six pleas in law.

The applicant argues, in particular, that the Board of Appeal exceeded its powers in that, in the context of the appeal proceedings, it comprehensively examined the evaluation decision and re-assessed it, and thereby arrived at the (both formally and substantively unjustified) conclusion that the decision of the Member States should be partially annulled and amended.

1. First plea in law, alleging that the Board of Appeal lacks competence in regard to substantive issues relating to the evaluation procedures.

2. Second plea in law, alleging infringement of the *Meroni* line of case-law of the Court of Justice, since the Board of Appeal, as a body of an EU agency, does not have any decision-making power of its own.

3. Third plea in law, alleging infringement of the principle of subsidiarity and of the principle of limited conferral of powers, in that the Board of Appeal infringed the rights of the Member States, institutionalised through their decision-making power within the Agency's Member State Committee, as there is no legal basis in EU law for the Board of Appeal's action.

4. Fourth plea in law, alleging infringement of the provisions of the REACH Regulation ([1]) by reason of the absence of any power of review on the part of the Board of Appeal in relation to the substance of assessment decisions.

5. Fifth plea in law, alleging infringement of the obligation to state reasons under the second paragraph of Article 296 TFEU, since the Board of Appeal failed to establish its purported power of review.

6. Sixth plea in law, alleging that the contested decision is substantively incorrect and unlawful.

([1]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1).

Action brought on 10 November 2017 — Kerstens v Commission

(Case T-757/17)

(2018/C 032/52)

Language of the case: French

Parties

Applicant: Petrus Kerstens (Overijse, Belgium) (represented by: C. Mourato, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 27 March 2017 addressed to the applicant in so far as it orders that Case CMS 15/017 is to be recommenced *ab initio*;

— annul the Commission's decision of 7 April 2017 addressed to the applicant in so far as it orders that Case CMS 12/063 is to be recommenced *ab initio*;

— award the applicant compensation amounting to EUR 40 000, by way of special non-material damages, to be paid by the European Commission;

— order the Commission to pay the costs, in accordance with Article 134 of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law, alleging that there has been a failure to comply with the annulling judgment of 14 February 2017, *Kerstens* v *Commission* (T-270/16 P, not published, EU:T:2017:74) and infringement of the principle of *ne bis in idem* on the part of the appointing authority, which decided to reopen the disciplinary proceedings to which the applicant had been subject.

2. Second plea in law, alleging that there has been a failure to comply with the judgment cited above and infringement of the principle of sound administration including the obligation to treat cases fairly and impartially, infringement of the principle of presumption of innocence, and a breach of the rights of the defence, in so far as the decisions to reopen those disciplinary proceedings do not guarantee impartial and fair treatment of the applicant's case.

3. Third plea in law, alleging that there has been a failure to comply with the judgment cited above and infringement of the principles of legal certainty and sound administration, and, in particular, of the reasonable time principle, given that, according to the applicant, new disciplinary proceedings must also take place within a reasonable time, which is not the situation in the present case.

4. Fourth plea in law, requesting special damages following the irregularities mentioned above by way of compensation for the non-material damage which the administrative authorities have allegedly caused the applicant, since, in his view, the annulment of the contested acts is not sufficient, in itself, to compensate for that damage.

Action brought on 17 November 2017 — UR v Commission

(Case T-761/17)

(2018/C 032/53)

Language of the case: French

Parties

Applicant: UR (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the selection board of 11 August 2017, taken following a review, not to include his name on the reserve list for Competition EPSO/AD/322/16;

— in any event, order the Commission 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 that the selection board made a manifest error of assessment in considering that the applicant's diploma did not satisfy one of the conditions for admission to the competition.

2. Second plea in law, alleging, in the alternative, that the competition notice is unlawful, based on the first paragraph of Article 27 of the Staff Regulations of Officials [of the European Union]. In particular, the applicant argues that the condition for admission at issue is not connected with the requirements of the posts to be filled as described in the competition notice and is, therefore, contrary to the interests of the service.

3. Third plea in law, alleging, in the further alternative, that the contested decision lacks a statement of reasons, inasmuch as the criteria established by the selection board for assessing the relevance of the applicant's diploma in the light of the condition for admission at issue have not been disclosed, which the applicant argues has prevented him from being able to prepare an adequate defence.

Action brought on 24 November 2017 — Beats Electronics v EUIPO — TrekStor (i.Beat)

(Case T-770/17)

(2018/C 032/54)

Language in which the application was lodged: English

Parties

Applicant: Beats Electronics LLC (Culver City, California, United States) (represented by: M. Petersenn, lawyer, I. Fowler and I. Junkar, Solicitors)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: TrekStor Ltd (Hong-Kong, Hong-Kong)

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 'i.Beat' — EU trade mark No 5 009 139

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 12 September 2017 in Joined Cases R 2175/2016-4 and R 2213/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it dismissed the Applicant's appeal recorded under number R 2175/2016-4 and allowed the Contested Mark to remain registered for MP3-players, in particular based on USB flash memory with mini hard discs;

— order that the costs of the proceedings be borne by the Defendant and by the other party to the proceedings before the Board of Appeal if it joins as intervener.

Pleas in law

— Infringement of Article 51(a) and (2) of Regulation No 207/2009 read in conjunction with Article 15 of Regulation No 207/2009;

— Infringement of Article 75 of Regulation No. 207/2009.

Action brought on 28 November 2017 — Estampaciones Rubí v Commission

(Case T-775/17)

(2018/C 032/55)

Language of the case: Spanish

Parties

Applicant: Estampaciones Rubí, SAU (Vitoria-Gasteiz, Spain) (represented by: D. Armesto Macías and K. Caminos García, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare admissible the present action, as well as the documents lodged as annexes;

— by a measure of organisation of procedure, order the Commission to submit full versions of the following documents, removing if necessary any confidential data of third parties contained therein:

(a) Informal message in reply to the submissions of 22 February and of 4 and 12 March 2013 (Álava), of 26 March 2013;

(b) Informal message in reply to the submission of 7 November (Álava), of 4 December 2012;

— annul the decisions of the Commission set out in those documents;

— in the alternative, declare that the Treaties have been infringed, as a result of the Commission's silence and order it to respond to the applicant's request submitted in writing on 31 July 2017, so that the applicant may, as a beneficiary of the aid in question, exercise the procedural rights granted to it by EU law in the context of a formal procedure assessing the compatibility of that aid;

— order the European Commission to pay the costs.

Pleas in law and main arguments

The present action seeks, primarily, the annulment of the Commission's decisions denying the compatibility with EU law of certain tax-related aid received by the applicant in the form of a tax credit of 45 % on particular investment projects, which decisions were notified to the Spanish tax authorities represented by the Diputación Foral de Álava, by letters from the Commission entitled 'informal message' and 'mensaje informal', of 4 December 2012 and 26 March 2013, to which the applicant gained access in the course of national proceedings.

The present action seeks, in the alternative, a declaration that the Commission failed to act, within the meaning of Article 265 TFEU, by its silence as regards the applicant's request of 31 July 2017 asking the Commission to take a position on the binding or non-binding legal nature of the aforementioned 'informal messages' and, if necessary, to grant the applicant the opportunity to express its views on all the relevant issues in the procedure.

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

1. First plea in law, alleging that the contested decisions were adopted without regard to the applicable minimum procedural guarantees

   — The applicant argues in this respect that the Commission disregarded the applicable minimum procedural guarantees, by taking a position in the informal messages concerning the incompatibility of a State aid without having followed the procedure laid down in Article 108(2) TFEU. That failure to observe the procedure entails an infringement of the applicant's fundamental rights, as enshrined in the Charter of Fundamental Rights of the European Union.

2. Second plea in law, alleging infringement of Article 107(3) TFEU

   — The applicant argues, in this respect, that the contested decisions err in finding the aid incompatible on the ground that it allegedly lacks an incentive effect.

3. Third plea in law, alleging infringement of Article 265 TFEU

   — The applicant argues, in this respect, that the Commission's failure to respond to the applicant's request that it take a position on the legal nature (binding or non-binding) of the 'informal messages' and, if necessary, grant the applicant the opportunity to express its views in that procedure, gave rise to a breach of the Treaties, to the applicant's detriment.

Action brought on 28 November 2017 — Autostrada Wielkopolska v Commission

(Case T-778/17)

(2018/C 032/56)

Language of the case: English

Parties

Applicant: Autostrada Wielkopolska S.A. (Poznań, Poland) (represented by: O. Geiss and D. Tayar, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission Decision of 25 August 2017 in Case SA.35356 (2013/C) (ex 2013/NN, ex 2012/N) on State aid implemented by Poland for the company Autostrada Wielkopolska S.A.; and

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed the applicant's participation rights, in particular the right to be heard prior to the adoption of the Contested Decision;

   — the Commission failed to provide the applicant with adequate opportunity to comment on the evidence provided by the State;

   — the Commission deprived the applicant of its right to submit observations in respect of key documents and findings on the basis of which the Commission adopted the Contested Decision;

   — the possibility that these omissions affected the outcome of this case cannot be ruled out.

2. Second plea in law, alleging that the Commission erred in law and in fact by applying the wrong test to determine whether the constituent elements of Article 107(1) TFEU were met and applied said (incorrect) test in breach of Article 107(1) TFEU;

   — the Commission's finding that there was an advantage for the purposes of Article 107(1) TFEU relies solely on the 'point-to-point comparison' test;

   — the Commission carried out its private investor test assessment after having already decided that there was an advantage for the purposes of Article 107(1) TFEU;

   — the Commission's 'point-to-point comparison' test is incorrect as a matter of law;

   — the Commission committed manifest errors of assessment when carrying out its 'point-to-point comparison' test assessment, notably by not taking into account relevant information that was available to it at the time it adopted the Contested Decision;

3. Third plea in law, alleging that the Commission manifestly erred in law and in fact by failing to apply the private investor test in line with the relevant case law and by failing to provide adequate reasoning, therefore infringing Article 107 (1) TFEU;

   — the Commission failed to apply the private investor test as an integral part of its assessment under Article 107 (1) TFEU in breach of the relevant case law;

   — the Commission failed to take into account relevant information, which was available at the time of adopting the Contested Decision and which a normally prudent and diligent private owner in a situation as close as possible to that of the State would not a priori have ignored;

4. Fourth plea in law, alleging that the Commission's finding of incompatible aid is based on erroneous findings and is vitiated by internal contradictions;

   — the Commission erred in fact in finding that the State funds only benefited investors.

5. Fifth plea in law, alleging that the Commission manifestly erred in fact and in law when calculating the amount of State aid by failing to carry out its own assessment and to provide adequate reasoning;

   — the Commission's finding of overcompensation for the period between September 2005 and October 2007 is vitiated by fundamental errors of assessment;

— the Commission failed to take into account relevant information that was available at the time of the Contested Decision.

Action brought on 4 December 2017 — Strabag Belgium v Parliament

(Case T-784/17)

(2018/C 032/57)

Language of the case: French

Parties

Applicant: Strabag Belgium (Antwerp, Belgium) (represented by: M. Schoups, K. Lemmens and M. Lahbib, lawyers)

Defendant: European Parliament

Form of order sought

— Declare this application for annulment admissible and well founded;

Consequently,

— Declare that (i) the decision of date unknown of the European Parliament not to accept the bid made by Strabag Belgium for the Framework contract for general contractor works in European Parliament buildings (Call for tenders No 06/D20/2017/M036) in Brussels, which decision was notified by letter of 24 November 2017, and (ii) the decision of date unknown of the European Parliament to award the Framework contract for general contractor works in European Parliament buildings in Brussels (Call for tenders No 06/D20/2017/M036) to five tenderers other than Strabag Belgium, and

— Uphold the request made by Strabag Belgium for the production of the following documents:

  — documents from the procurement file in which contacts between the Parliament and the tenderers concerning abnormal prices were reported in accordance with Article 160(3) of Commission Delegated Regulation (EU) 2015/2462 of 30 October 2015 amending Delegated Regulation (EU) No 1268/2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union;

  — from the decision awarding the contract to five other tenderers and not selecting the bid made by Strabag Belgium of date unknown;

  — from the tender analysis report;

— Order the European Parliament to pay all the costs, including procedural compensation.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging infringement:

(i) of Article 110(5) of Regulation (EU, Euratom) 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 and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1) as amended by Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council of 28 October 2015 (OJ 2015 L 286, p. 1), providing that the Commission is to be empowered to adopt delegated acts in accordance with Article 210 concerning details on the award criteria, including the most economically advantageous tender;

(ii) of Article 151 as amended by Commission Delegated Regulation (EU) 2015/2462 of 30 October 2015 amending Delegated Regulation (EU) No 1268/2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2015 L 342, p. 7), setting out the rules applicable to abnormally low tenders, and

(iii) of Article 102 of Regulation (EU, Euratom) No 966/2012, enshrining the principles of transparency, proportionality, equal treatment and non-discrimination in public contracts.

Action brought on 27 November 2017 — Ilhan v EUIPO — Time Gate (SPORTSWEAR COMPANY BIG SAM)

(Case T-785/17)

(2018/C 032/58)

Language in which the application was lodged: English

Parties

Applicant: Ercan Ilhan (Istanbul, Turkey) (represented by: S. Can, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Time Gate GmbH (Köln, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: International registration designating the European Union in respect of the figurative mark containing the word elements 'SPORTSWEAR COMPANY BIG SAM' – International registration designating the European Union No 891 276

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 13 September 2017 in Case R 974/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 13 September 2017 (R 974/2016-5) and therefore allow the registration of the trademark Sportswear Company BIG SAM;

— order Time Gate GmbH to bear its own costs;

— order EUIPO to bear its own costs.

Pleas in law

— Acquiescence pursuant Article 54 of Regulation No 207/2009;

— Erroneous assessment of the likelihood of confusion of signs.

Action brought on 28 November 2017 — Parfümerie Akzente v EUIPO (GlamHair)

(Case T-787/17)

(2018/C 032/59)

Language of the case: German

Parties

Applicant: Parfümerie Akzente GmbH (Pfedelbach, Germany) (represented by: O. Spieker, A. Schönfleisch and M. Alber, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union word mark 'GlamHair' — Application No 15 211 956

Contested decision: Decision of the Second Board of Appeal of EUIPO of 25 September 2017 in Case R 82/2017-2

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 7(1)(b) and (c) of Regulation No 207/2009.

Action brought on 29 November 2017 — Szabados v EUIPO — Sociedad Española de Neumología y Cirugía Torácica (Separ) (MicroSepar)

(Case T-788/17)

(2018/C 032/60)

Language in which the application was lodged: German

Parties

Applicant: Andreas Szabados (Grünwald, Germany) (represented by: S. Wobst, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Sociedad Española de Neumología y Cirugía Torácica (Separ) (Barcelona, Spain)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: European Union word mark 'MicroSepar' — Application No 14 576 532

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 21 September 2017 in Case R 2420/2016-1

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 6 December 2017 — Mouldpro v EUIPO — Wenz Kunststoff (MOULDPRO)

(Case T-796/17)

(2018/C 032/61)

Language in which the application was lodged: English

Parties

Applicant: Mouldpro ApS (Ballerup, Denmark) (represented by: W Rebernik, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Wenz Kunststoff GmbH & Co. KG (Lüdenscheid, 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 'MOULDPRO' — EU trade mark No 10 022 317

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 16 October 2017 in Case R 2153/2015-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs, including the costs of the proceedings before the Board of Appeal.

Pleas in law

— Unlawful registration by an agent or representative, CTMR article 51(1)(b), in conjunction with article 8(3);

— Earlier non registered trademark rights used in the course of trade CTMR article 53(1)(c), in conjunction with article 8 (4);

— The EUTM was applied in bad faith by the proprietor CMTR article 52(1)(b).

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