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COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 5 July 2018 by the European Central Bank against the judgment of the General Court (Sixth Chamber) delivered on 26 April 2018 in Case T-251/15: Espírito Santo Financial (Portugal) v European Central Bank

(Case C-442/18 P)

(2018/C 445/02)

Language of the case: English

Parties

Appellant: European Central Bank (represented by: F. Malfrère, M. Ioannidis, Agents, H.-G. Kamman, Rechtsanwalt)

Other party to the proceedings: Espírito Santo Financial (Portugal), SGPS, SA

Form of order sought

The appellant claims that the Court should:

— set aside order No. 1 of the judgment of the General Court of 26 April 2018, Espírito Santo Financial (Portugal), SGPS, SA v ECB, T-251/15, EU:T:2018:234;

— dismiss the application also as concerns the ECB's refusal to disclose the amount of credit in the extracts of the minutes recording the decision of the Governing Council of the ECB of 28 July 2014;

— in the alternative to No. 2, refer the case back to the General Court of the European Union for it to give judgment;

— order the applicant at first instance and respondent to pay two thirds (2/3), and the ECB to pay one third (1/3) of the costs of the proceedings.

Pleas in law and main arguments

First and only ground of appeal: infringement of Article 10.4 of the Statute of the European System of Central Banks and of the European Central Bank ('Statute') and the first indent of Article 4(1)(a) of Decision 2004/258 ([1])

The ECB submits that the General Court erroneously interpreted and applied Article 10.4 of the Statute and the first indent of Article 4(1)(a) of Decision 2004/258, by holding in the judgment under appeal, in particular in paragraphs 55, 75-81 as well as 124 and 161, that the Governing Council's discretion regarding the disclosure of its minutes 'must be exercised in accordance with the conditions and limits laid down in Decision 2004/258' (paragraph 80), meaning, in the particular case, that the ECB is obliged to provide a statement of reasons explaining how disclosure of information contained in minutes of Governing Council proceedings recording Governing Council decisions specifically and actually undermine the public interest as regards the confidentiality of proceedings of the ECB's decision-making bodies.

Article 10.4 of the Statute establishes the presumption that information which is part of Governing Council proceedings needs to be kept confidential in order to protect ECB independence and effectiveness. This primary-law rule, which cannot be deviated from by secondary law, also applies to parts of the minutes recording Governing Council decisions. It is restated in the first indent of Article 4(1)(a) of Decision 2004/258. It follows from the general principle of confidentiality of Governing Council proceedings, including decisions, as set by Article 10.4 of the Statute, that the ECB does not need to subject its decision to make the outcome of its deliberations public to the substantive and procedural standards set out in Decision 2004/258. In particular, it does not need to explain why disclosure of such Governing Council minutes would specifically and actually undermine the public interest as regards the confidentiality of the Governing Council proceedings.

([1]) Decision 2004/258/EC of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (OJ 2004, L 80, p. 42).

Appeal brought on 1 August 2018 by the European Parliament against the judgment of the General Court (Sixth Chamber) delivered on 17 May 2018 in Case T-566/16: Josefsson v European Parliament

(Case C-506/18 P)

(2018/C 445/03)

Language of the case: English

Parties

Appellant: European Parliament (represented by: Í. Ní Riagáin Düro, V. Montebello-Demogeot, Agents)

Other party to the proceedings: Erik Josefsson

Form of order sought

The appellant claims that the Court should:

— annul the judgment under appeal;

— consequently, dismiss the application at first instance;

— order the parties to bear their own costs in the present proceedings;

— order Mr Josefsson to pay the costs at first instance.

Pleas in law and main arguments

In its appeal, Parliament relies on the following grounds:

(i) error of law, distortion of the facts and failure to state reasons in the finding that the requirement of a qualification in law was the cause of the applicant's dismissal;

(ii) error of law in its finding that the adoption of an organigram and the decisions relating to it and the description of the posts therein must be subject to the applicant's right to be heard;

(iii) distortion of the facts, manifest error of assessment and lack of reasoning in the conclusion that, if the applicant had also been heard on the question of his possession of a qualification in law, that hearing could have effectively changed the result of the decision-making process in question.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 13 August 2018 — Gesamtverband Autoteile-Handel e.V. v KIA Motors Corporation

(Case C-527/18)

(2018/C 445/04)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant and appellant on a point of law: Gesamtverband Autoteile-Handel e.V.

Defendant and respondent on a point of law: KIA Motors Corporation

Questions referred

1. Do manufacturers have to supply the information to be provided to independent operators under the first sentence of Article 6(1) of Regulation (EC) No 715/2007 ([1]) in a form amenable to onward electronic processing?

2. Is discrimination against independent operators as prohibited under the first sentence of Article 6(1) of Regulation (EC) No 715/2007 present in the case where a manufacturer, by engaging an information service provider, opens a further channel for information on the sale of original replacement parts by authorised dealers and repairers?

([1]) Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ 2007 L 171, p. 1).

Appeal brought on 13 August 2018 by Outsource Professional Services Ltd against the judgment of the General Court (Seventh Chamber) delivered on 31 May 2018 in Case T-340/16: Flatworld Solutions Pvt Ltd v European Union Intellectual Property Office

(Case C-528/18 P)

(2018/C 445/05)

Language of the case: English

Parties

Appellant: Outsource Professional Services Ltd (represented by: A. Kempter, Rechtsanwalt)

Other parties to the proceedings: European Union Intellectual Property Office, Flatworld Solutions Pvt. Ltd

Form of order sought

The appellant claims that the Court should:

— annul the judgement of the General Court (Seventh Chamber) of 31 May 2018 in Case T-340/16;

— confirm the decision of the Fourth board of Appeal of EUIPO of 15 April 2016 in case number R 611/2015-4;

— order Flatworld Solutions Pvt. Ltd to pay the costs including the costs necessarily incurred by the EUTM owner/successor/appellant.

Pleas in law and main arguments

The appeal is based on the infringement of Union Law by the General Court, namely Article 52(1)b of Council Regulation 207/2009 ([1]) on the Community trade mark, last amended by Council Regulation 2015/2424 ([2]).

The General Court erred in law by finding that the EUTM owner/predecessor was acting in bad faith when it filed an application to register the trade mark No 006035547. The General Court misinterpreted the concept of bad faith. There is nothing dishonest or unethical about using descriptive wording to describe a business. Hence the registration as a trademark was not in bad faith.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009, L 78, p. 1).

([2]) Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OJ 2015, L 341, p. 21).

Request for a preliminary ruling from the Eparchiako Dikastirio Larnakas (Cyprus) lodged on 19 September 2018 — D. Z. v Blue Air — Airline Management Solutions SRL

(Case C-584/18)

(2018/C 445/06)

Language of the case: Greek

Referring court

Eparchiako Dikastirio Larnakas

Parties to the main proceedings

Applicant: D. Z.

Defendant: Blue Air — Airline Management Solutions SRL

Questions referred

1. Should Decision No 565/2014/EU ([1]) be interpreted as producing direct legal effect in the form, on the one hand, of the right of a third country national without requiring to have a visa to enter the Member State of destination and, on the other hand, an obligation on that Member State of destination not to require him to have such a visa where that national is in possession of a visa or residence permit included in the list of visas and residence permits recognised on the basis of Decision No 565/2014/EU, which the Member State of destination has undertaken to apply?

2. Where an air carrier directly and/or through its authorised and designated representatives at the airport of the Member State of departure denies boarding to a passenger, giving as its reason that the authorities of the Member State of destination have refused him entry to that State because he allegedly has no entry visa, can the air carrier be considered as exercising powers and acting as an emanation of that State, such that Decision No 565/2014/EU can be cited against it by the passenger concerned before the courts of the Member State of departure in order to prove that he had a right of entry without requiring an additional visa and to claim compensation for infringement of that right and, by extension, of his contract of carriage?

3. Can an air carrier directly and/or through its authorised and designated representatives rely upon a decision by the authorities of the Member State refusing a third country national entry to the territory of that State in order to deny that national boarding, without first issuing and/or giving him a written substantiated decision with respect to the refusal of entry (see Article 14(2) of Regulation (EC) No 2016/399, ([2]) previously Article 13 of Regulation (EC) No 562/2006, which requires a substantiated decision stating the reasons for refusal of entry), in order to safeguard respect for the fundamental rights and, in particular, legal protection of the rights of the passenger concerned (see Article 4 of that Regulation)?

4. Does Article 2(j) of Regulation (EC) No 261/2004 ([3]) mean that cases of denied boarding are exempt from its scope whenever boarding is denied by decision of the air carrier due to alleged 'inadequate travel documentation'? Should it be interpreted to mean that denied boarding does fall within the scope of the Regulation where a court finds, based on the particular circumstances of each specific case, that the travel documentation was adequate and that the denial of boarding was unsubstantiated or unlawful in that it infringed EU law?

5. Can a passenger be deprived of the right to compensation granted under Article 4(3) of Regulation (EC) No 261/2004 where the air carrier relies upon a clause precluding or limiting its liability in the event of allegedly inadequate travel documentation, where such a clause is included in the standard terms, published in advance, governing the operation of and/or provision of services by the air carrier? Does Article 15, read in combination with Article 14, of that Regulation prevent the application of such clauses precluding and/or refusing the air carrier's liability?

([1]) Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC (OJ 2014 L 157, p. 23).

([2]) Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2016 L 77, p. 1).

([3]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 — Commission Statement (OJ 2004 L 46, p. 1).

Appeal brought on 21 September 2018 by The Goldman Sachs Group Inc. against the judgment of the General Court (Eighth Chamber) delivered on 12 July 2018 in Case T-419/14: The Goldman Sachs Group v European Commission

(Case C-595/18 P)

(2018/C 445/07)

Language of the case: English

Parties

Appellant: The Goldman Sachs Group Inc. (represented by: A. Mangiaracina, avvocatessa, J. Koponen, advokat)

Other parties to the proceedings: European Commission, Prysmian SpA, Prysmian Cavi e Sistemi Srl

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— annul, in whole or in part (e.g. from May 2007 or November 2007 onwards, where GS Group and its affiliates held only around 45 % and 26 % of Prysmian's shares respectively), Articles 1, 2, 3 and 4 of Commission Decision C(2014) 2139 ([1]) dated 2 April 2014 insofar as they concern the appellant; and/or

— reduce the fine imposed on the appellant by Article 2 of Commission Decision C(2014) 2139 dated 2 April 2014; and

— order the Commission to pay the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

First Plea: The General Court misapplied Article 101 TFEU and Article 23.2 of Regulation 1/2003 ([2]) by holding the appellant liable for an infringement committed by Prysmian from 29 July 2005 to 3 May 2007 ('the pre-IPO period').

Second Plea: The appellant did not exercise decisive influence in the sense required by the case law between 3 May 2007 to 28 January 2009 ('the post-IPO period').

Third Plea: Request that the Court of Justice affords the appellant the benefit of any reduction of the fine granted to Prysmian.

(1) Commission Decision of 2 April 2014 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (Case AT.39610 — Power Cables).
(2) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003, L 1, p. 1).

Request for a preliminary ruling from the Bundesverwaltungsgericht (Austria) lodged on 25 September 2018 — Adler Real Estate AG and Others

(Case C-605/18)

(2018/C 445/08)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellants: Adler Real Estate AG, Petrus Advisers LLP, TZ

Defendant authority: Finanzmarktaufsichtsbehörde

Questions referred

1. Is Article 3(1a), fourth subparagraph, (iii), of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, (1) as last amended by Directive 2013/50/EU of the European Parliament and of the Council, to be interpreted as meaning that it is a requirement for the permissibility of the imposition of 'more stringent requirements' on the 'holder of shares, or a natural person or legal entity', that the 'laws, regulations or administrative provisions' providing for more stringent requirements for holdings publicity are 'supervised' by an authority designated by the Member State pursuant to Article 4 of Directive 2004/25/EC (2) … concerning takeover bids and that such supervision encompasses compliance with the more stringent requirements regarding holdings publicity within the meaning of Directive 2004/109/EC?

2. Does Article 47 of the Charter of Fundamental Rights of the European Union preclude a national practice according to which a decision having the force of *res judicata* taken by the supervisory authority pursuant to Article 4 of Directive 2004/25/EC by means of which a natural person's breach of national provisions adopted in implementation of Directive 2004/25/EC was established is also given binding effect in the context of criminal proceedings conducted against that same natural person owing to a breach of national standards connected with such proceedings in implementation of Directive 2004/109/EC (Transparency Directive), with the result that that natural person is prevented from challenging, in law and fact, the breach of law already established with the force of *res judicata*?

(1) OJ 2004 L 390, p. 38.
(2) Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ 2004 L 142, p. 12).

Request for a preliminary ruling from the Tribunal Tributário de Lisboa (Portugal) lodged on 28 September 2018 — State of Canada v Autoridade Tributária e Aduaneira

(Case C-613/18)

(2018/C 445/09)

Language of the case: Portuguese

Referring court

Tribunal Tributário de Lisboa

Parties to the main proceedings

Applicant: State of Canada

Defendant: Autoridade Tributária e Aduaneira

Question referred

In the context of taxation of dividends distributed by a company established in the national territory to a non-resident entity, is it compatible with the principle precluding restrictions on movements of capital between Member States and third countries for there to be an effective rate of corporation tax which is applied more disadvantageously to entities resident in a third country than to a resident in the national territory which is similar in nature?

Action brought on 28 September 2018 — European Commission v Slovak Republic

(Case C-614/18)

(2018/C 445/10)

Language of the case: Slovak

Parties

Applicant: European Commission (represented by: A. Tokár and C. Cattabriga, acting as Agents)

Defendant: Slovak Republic

Form of order sought

The European Commission claims that the Court should:

— declare that the Slovak Republic, by denying third-country nationals who are not family members of EU citizens, whose visa application has been refused or whose visa has been annulled or revoked, the right to institute court proceedings as defined in EU law, has failed to fulfil its obligations under Article 19(1) of the Treaty on European Union and Article 47 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 32(3), Article 34(7) and Article 35(7) of Regulation (EC) No 810/2009 ([1]) (Visa Code);

— order Slovak Republic to pay the costs.

Pleas in law and main arguments

In support of its action, the Commission submits that the legal questions at issue in the present case have been clearly resolved by the judgment of the Court in Case C-403/16, *El Hassani*, in which the Court ruled that Article 32(3) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, ([2]) read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it requires Member States to provide for an appeal procedure against decisions refusing visas, the procedural rules for which are a matter for the legal order of each Member State in accordance with the principles of equivalence and effectiveness. Those proceedings must, at a certain stage of the proceedings, guarantee a judicial appeal.

The Commission therefore concludes that the arguments put forward by the Slovak Republic during the pre-litigation procedure in the present case cannot succeed, and reiterates its own position that the Slovak Republic is failing to fulfil its obligations as set out in the application.

(1) Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ 2009 L 243, p. 1).

(2) Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) No 1683/95 and (EC) No 539/2001 and Regulations (EC) No 767/2008 and (EC) No 810/2009 of the European Parliament and of the Council (OJ 2013 L 182, p. 1).

Request for a preliminary ruling from the Amtsgericht Kehl (Germany) lodged on 28 September 2018 — Criminal proceedings against UY

(Case C-615/18)

(2018/C 445/11)

Language of the case: German

Referring court

Amtsgericht Kehl

Parties to the main proceedings

Staatsanwaltschaft Offenburg

v

UY

Question referred

1. Is EU law, in particular Directive 2012/13 ([1]) and Articles 21, 45, 49 and 56 TFEU, to be interpreted as meaning that it precludes legislation of a Member State which makes it possible, in the course of criminal proceedings, solely because the accused is not resident in that State but in another Member State, to make an order that the accused has to appoint a person authorised to accept service of a penalty order made against him, with the result that the penalty order would acquire the force of *res judicata* and thus form the legal prerequisite for the criminal liability of any later action taken by the accused ('Tatbestandswirkung') even if the accused was not actually aware of the penalty order and the accused actually learning of the penalty order is not guaranteed to the same extent as it would have been if the penalty order been served on the accused had he been resident in that Member State?

2. In the event that the first question is answered in the negative: is EU law, in particular Directive 2012/13 and Articles 21, 45, 49 and 56 TFEU, to be interpreted as meaning that it precludes legislation of a Member State which makes it possible, in the course of criminal proceedings, solely because the accused is not resident in that State but in another Member State, to make an order that the accused has to appoint a person authorised to accept service of a penalty order made against him, with the result that the penalty order would acquire the force of *res judicata* and thus form the legal prerequisite for the criminal liability of any later action taken by the accused ('Tatbestandswirkung') and, given that he has to make sure that he actually learns of the penalty order, the accused is subject to more stringent subjective obligations in the prosecution of that criminal offence than he would have been had he been resident in that Member State, resulting in a possible prosecution for negligence on the part of the accused?

(1) Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1).

Reference for a preliminary ruling from the Court of Session, Edinburgh (United Kingdom) made on 3 October 2018 — Andy Wightman and Others v Secretary of State for Exiting the European Union

(Case C-621/18)

(2018/C 445/12)

Language of the case: English

Referring court

Court of Session, Edinburgh

Parties to the main proceedings

Applicants: Andy Wightman, Ross Greer, Alyn Smith, David Martin, Catherine Stihler, Jolyon Maugham, Joanna Cherry

Defendant: Secretary of State for Exiting the European Union

Other parties to the procedure: Chris Leslie, Tom Brake

Question referred

Where, in accordance with Article 50 of the Treaty on European Union, a Member State has notified the European Council of its intention to withdraw from the European Union, does EU law permit that notice to be revoked unilaterally by the notifying Member State; and, if so, subject to what conditions and with what effect relative to the Member State remaining within the European Union?

Action brought on 11 October 2018 — European Commission v French Republic

(Case C-636/18)

(2018/C 445/13)

Language of the case: French

Parties

Applicant: European Commission (represented by: J.-F. Brakeland, acting as Agent)

Defendant: French Republic

Form of order sought

The applicant claims that the Court should:

declare, first, that, by systematically and persistently exceeding the annual limit value for NO_2 from 1 January 2010 in the following 12 agglomerations and air quality zones: Marseille (FR03A02), Toulon (FR03A03), Paris (FR04A01), Auvergne-Clermont-Ferrand (FR07A01), Montpellier (FR08A01), Toulouse Midi-Pyrénées (FR12A01), ZUR Reims Champagne-Ardenne (FR14N10), Grenoble Rhône-Alpes (FR15A01), Strasbourg (FR16A02), Lyon-Rhône-Alpes (FR20A01), ZUR Vallée de l'Arve Rhône-Alpes (FR20N10) and Nice (FR24A01) and by systematically and persistently exceeding the hourly limit value for NO_2 from 1 January 2010 in the following two agglomerations and air quality zones: Paris (FR04A01) and Lyon Rhône-Alpes (FR20A01), the French Republic has continued to fail to fulfil its obligations under Article 13(1) of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, ([1]) read in conjunction with Annex XI to that directive, from the coming into force of the limit values in 2010,

and

secondly, that the French Republic has failed, from 11 June 2010, to fulfil its obligations under Article 23(1) of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, read in conjunction with Annex XV to that directive, and in particular the obligation laid down in the second subparagraph of Article 23(1) of that directive to ensure that the exceedance period is kept as short as possible;

order the French Republic to pay the costs.

Pleas in law and main arguments

From 2010, the annual and hourly limit values of NO_2 were systematically and persistently exceeded in the 12 and two zones, respectively. Those exceedances in themselves constitute an infringement of Article 13(1) of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, read in conjunction with Annex XI to that directive.

Notwithstanding that infringement of Article 13(1) of Directive 2008/50/EC, read in conjunction with Annex XI thereto, the French Republic has not adopted, contrary to what is provided for by the second subparagraph of Article 23(1) of Directive 2008/50/EC, any appropriate measures in air quality plans in order to ensure that the period during which limits are exceeded can be kept as short as possible.

The lack of effectiveness of those measures is apparent from, inter alia, the duration of the period during which limit values were exceeded, the level of those exceedances, their development and the detailed analysis of each of the plans adopted by the French authorities for the 12 zones concerned.

([1]) OJ 2008 L 152, p. 1.

Action brought on 12 October 2018 — European Commission v Romania

(Case C-638/18)

(2018/C 445/14)

Language of the case: Romanian

Parties

Applicant: European Commission (represented by: L. Nicolae and K. Petersen, acting as Agents)

Defendant: Romania

Form of order sought

The applicant claims that the Court should:

— declare that, by systematically and constantly failing, since 2007, to comply with the daily limit values for concentrations of PM_{10} and by constantly and systematically failing, from 2007 to 2014 inclusive, with the exception of 2013, to comply with the annual limit values for concentrations of PM_{10} in Zone RO32101, Bucharest, Romania has failed to fulfil its obligations under Article 13(1) of Directive 2008/50/EC, ([1]) read in conjunction with Annex XI thereto;

— declare that, with regard to Zone RO32101, Bucharest, Romania has, since 11 June 2010, failed to fulfil the obligations laid down in Article 23(1) of Directive 2008/50/EC, read in conjunction with Section A of Annex XV thereto, in particular the obligation laid down in the second subparagraph of that provision to ensure that the period of exceeding the limit values for PM_{10} be as short as possible;

— order Romania to pay the costs.

Pleas in law and main arguments

Since 2007, the daily limit values for concentrations of PM_{10} have been systematically and constantly exceeded in Zone RO32101, Bucharest. Moreover, from 2007 to 2014 inclusive, with the exception of 2013, the annual limit values for concentrations of PM_{10} have been exceeded in that zone. Those exceedances are sufficient for a finding of infringement of Article 13(1) of Directive 2008/50/EC, read in conjunction with Annex XI thereto.

Despite those exceedances, Romania has not established plans for that zone which comply with Article 23(1) of that directive, in particular the obligation to adopt appropriate measures so that the period of exceeding the limit values for PM_{10} may be as short as possible. That failure to fulfil obligations is a result of the prolonged period during which the exceedances were recorded, the lengthy timeframes laid down for putting an end to the exceedances, the lack of some of the elements set out in Section A of Annex XV to the directive, and the fact that the plans do not address all the main causes of the exceedances of the limit values and also do not lay down sufficient mandatory measures to ensure compliance with those limit values.

([1]) OJ 2008 L 152, p. 1.

Action brought on 12 October 2018 — European Commission v Kingdom of Spain

(Case C-642/18)

(2018/C 445/15)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán, E. Sanfrutos Cano and F. Thiran, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

— declare, in accordance with the first paragraph of Article 258 of the Treaty on the Functioning of the European Union,

  — that, by not adopting waste management plans in accordance with the requirements of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, ([1]) or by not having revised those plans in accordance with Directive 2008/98/EC concerning the Autonomous Communities of Aragon, the Balearic Islands, the Canary Islands, Madrid and the Autonomous City of Ceuta, the Kingdom of Spain has failed to fulfil its obligations under Article 28(1) and Article 30(1) of Directive 2008/98/EC; and

  — that, by not officially informing the Commission of the adoption or revision of the waste management plans concerning the Autonomous Communities of Aragon, the Balearic Islands, the Canary Islands, Madrid and the Autonomous City of Ceuta, the Kingdom of Spain has failed to fulfil its obligations under Article 33(1) of Directive 2008/98/EC;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Commission submits that the Kingdom of Spain has failed to fulfil its obligations under the abovementioned subparagraphs and articles of Directive 2008/98/EC by not adopting the required measures before 14 September 2017, the date laid down in its reasoned opinion of 14 July 2017.

([1]) OJ 2008 L 312, p. 3.

Action brought on 23 October 2018 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-664/18)

(2018/C 445/16)

Language of the case: English

Parties

Applicant: European Commission (represented by: J. Norris-Usher, K. Petersen, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that: in continuing to exceed the annual limit values for NO2 in zones UK0001 (Greater London Urban Area); UK0002 (West Midlands Urban Area); UK0003 (Greater Manchester Urban Area); UK 0004 (West Yorkshire Urban Area); UK 0013 (Teesside Urban Area); UK0014 (The Potteries); UK0018 (Kingston upon Hull); UK0019 (Southampton Urban Area); UK0024 (Glasgow Urban Area); UK0029 (Eastern); UK0031 (South East); UK0032 (East Midlands); UK0033 (North West & Merseyside); UK0034 (Yorkshire & Humberside); UK0035 (West Midlands) and UK0036 (North East) as well as with the hourly limit values for NO2 in zone UK0001 (Greater London Urban Area) since the entry in to force on those limit values on 1 January 2010 the United Kingdom of Great Britain and Northern Ireland has failed to comply with Article 13 (1) of Directive 2008/50/EC ([1]) in conjunction with Annex XI of the Directive;

— declare that: since 11 June 2010, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 23 (1) of Directive 2008/50/EC in conjunction with Annex XV of the Directive with regard to the above-mentioned zones and in particular the obligation under subparagraph 2 of Article 23 (1) to keep the exceedance period as short as possible;

— order the United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

Since 2010, the annual limits for NO2 have been exceeded in 16 zones and agglomerations and the hourly limits have been exceeded in one zone. These exceedances amount in and of themselves to a violation of Article 13 (1) of Directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe, read in conjunction with annex XI of the same Directive.

Despite this persistent violation of Article 13 (1) read in conjunction with annex XI, of the Directive, the United Kingdom of Great Britain and Northern Ireland has failed to adopt air quality plans which set out appropriate measures so that the exceedance period can be kept as short as possible. The insufficiency of the measures foreseen by the United Kingdom of Great Britain and Northern Ireland is evidenced by the duration of the period in which the limit values have been exceeded, the magnitude of the exceedances and the compliance trend, as well as a detailed analysis of each of the respective air quality plans pertaining to the 16 zones and agglomerations which are the object of the present application.

([1]) Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008, L 152, p. 1).

GENERAL COURT

Judgment of the General Court of 24 October 2018 — Bacardi v EUIPO — Palírna U Zeleného stromu (42 BELOW)

(Case T-435/12) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark 42 BELOW — Non-registered earlier national figurative mark VODKA 42 — Relative ground for refusal — Article 8(4) of Regulation (EC) No 207/2009 (now Article 8(4) of Regulation (EU) 2017/1001) — Use in the course of trade — Application of national law by EUIPO)

(2018/C 445/17)

Language of the case: English

Parties

Applicant: Bacardi Co. Ltd (Vaduz, Liechtenstein) (represented initially by M. Reinisch and subsequently by A. Parassina, L. Rigas and L. Lorenc, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Palírna U Zeleného stromu a.s., formerly Granette & Starorežná Distilleries a.s. (Ústí nad Labem, Czech Republic) (represented by T. Chleboun, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 9 July 2012 (Case R 2100/2011-2), relating to opposition proceedings between Granette & Starorežná Distilleries and Bacardi.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Bacardi Co. Ltd to pay the costs.*

([1]) OJ C 379, 8.12.2012.

Judgment of the General Court of 24 October 2018 — Nova v Commission

(Case T-299/15) ([1])

(Arbitration clause — Grant agreement concluded in the context of the pilot project seeking to establish a network of contacts and discussions between municipalities on experiences and best practices in respect of the resettlement and integration of refugees — No objective assessment of the outcome of the project — Proportionality — Repayment of the sums paid — Measures of inquiry — Counterclaim)

(2018/C 445/18)

Language of the case: Italian

Parties

Applicant: Nova Onlus Consorzio nazionale di cooperative sociali — Soc. coop. (Trani, Italy) (represented by: M. Astolfi and M. Petrucci, lawyers)

Defendant: European Commission (represented by: initially, L. Di Paolo and L. Cappelletti, subsequently L. Di Paolo, and finally O. Verheecke and F. Moro, acting as Agents, and A. Dal Ferro, lawyer)

Re:

First, application based on Article 272 TFEU seeking, in essence, a declaration that the Commission is not justified in reclaiming from the applicant the sum of EUR 80 242,78 pursuant to the Grant Agreement HOME/2011/PPRS/AG/2176 and a direction requiring the Commission to pay EUR 52 146,36 plus default interest, and, second, counterclaim of the Commission seeking a direction requiring the applicant to repay the sum of EUR 80 242,78 plus default interest in performance of that Grant Agreement.

Operative part of the judgment

The Court:

1. *Declares that the European Commission is not justified, pursuant to the Grant Agreement with the reference HOME/2011/PPRS/AG/2176, to reclaim from Nova Onlus Consorzio nazionale di cooperative sociali — Soc. coop. 15 % of the costs associated with the website of the Transnational Observatory for Refugees' Resettlement in Europe project, namely EUR 3 002,45;*

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

3. *Orders Nova Onlus Consorzio nazionale di cooperative sociali to pay to the Commission, pursuant to that agreement, the amount of EUR 77 240,33, increased by default interest at the rate of 3,55 % from 19 May 2015 until full payment of that amount is made;*

4. *Dismisses the counterclaim as to the remainder;*

5. *Orders Nova Onlus Consorzio nazionale di cooperative sociali to bear its own costs and to pay two thirds of those incurred by the Commission;*

6. *Orders the Commission to bear one third of its own costs.*

([1]) OJ C 254, 3.8.2015.

Judgment of the General Court of 24 October 2018 — Epsilon International v Commission

(Case T-477/16) ([1])

(Arbitration clause — Contracts concluded under the Seventh Framework Programme for research, technological development and demonstration activities (2007-2013) — Interest in bringing proceedings — Eligible costs — Suspension of payment — Application for annulment — Decision to register the applicant in the central database of the Early Detection and Exclusion System (EDES) — Act not open to challenge — Inadmissibility)

(2018/C 445/19)

Language of the case: English

Parties

Applicant: Epsilon International SA (Marousi, Greece) (represented by: D. Bogaert and A. Guillerme, lawyers)

Defendant: European Commission (represented by: J. Estrada de Solà, A. Katsimerou and A. Kyratsou, acting as Agents)

Re:

Application, first, under Article 272 TFEU for a declaration (i) that the amounts paid by the Commission under the Briseide, i-SCOPE and Smart-Islands grant agreements constitute eligible costs; (ii) that the Commission's decisions to suspend payments in respect of the i-Locate, eENV-Plus, GeoSmartCity and c-Space projects are unfounded; (iii) that the Commission's unlawful conduct caused damage to the applicant; and, second, (i) under Article 263 TFEU for annulment of the decision of the Commission of 17 June 2016 (Ares (2016) 2835215) registering EPSILON in the Early Detection and Exclusion System (EDES) database and (ii) under Article 268 TFEU for the award of compensation in respect of the damage allegedly suffered by the applicant as a result of that act.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Epsilon International SA to pay the costs.*

([1]) OJ C 402, 31.10.2016.

Judgment of the General Court of 24 October 2018 — Grupo Orenes v EUIPO — Akamon Entertainment Millenium (Bingo VIVA! Slots)

(Case T-63/17) ([1])

(European Union trade mark — Opposition proceedings — Application for European Union figurative mark Bingo VIVA! Slots — Earlier European Union figurative mark vive bingo — 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) — Subject matter of the dispute)

(2018/C 445/20)

Language of the case: Spanish

Parties

Applicant: Grupo Orenes (Murcia, Spain) (represented by: M. J. Sanmartín Sanmartín, lawyer)

Defendant: European Union Intellectual Property Office (represented by: S. Palmero Cabezas, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Akamon Entertainment Millenium (Barcelona, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 7 November 2016 (Case R 453/2016-2) concerning opposition proceedings between Grupo Orenes and Akamon Entertainment Millenium.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Grupo Orenes to pay the costs.*

([1]) OJ C 95, 27.3.2017.

Judgment of the General Court of 24 October 2018 — Fernández González v Commission

(Case T-162/17 RENV) ([1])

(Civil service — Members of the temporary staff — Article 2(c) of the Conditions of Employment of Other Servants of the European Union — Vacancy notice relating to a temporary agent post falling under Article 2(b) of the Conditions of Employment of Other Servants of the European Union — Rejection of application — Plea of illegality — Article 8 of the Conditions of Employment of Other Servants of the European Union — Liability — Loss of opportunity)

(2018/C 445/21)

Language of the case: French

Parties

Applicant: Elia Fernández González (Brussels, Belgium) (represented by: M. Casado García-Hirchfeld and É. Boigelot, lawyers)

Defendant: European Commission (represented by: G. Berscheid and L. Radu Bouyon, acting as Agents, and D. Waelbroek and A. Duron, lawyers)

Re:

Action on the basis of Article 270 TFEU seeking, first, annulment of the Commission decision of 14 November 2014 rejecting the applicant's application for the temporary agent post that is the subject of vacancy notice COM/2014/2036 and annulment of the decision of 22 May 2015 rejecting the applicant's administrative complaint and, second, compensation for the harm that the applicant claims to have suffered.

Operative part of the judgment

The Court:

1. *Annuls the decision of the European Commission of 14 November 2014 rejecting the application of Ms Fernández González for the temporary agent post that is the subject of vacancy notice COM/2014/2036;*

2. *Orders the Commission to pay to Ms Fernández González the amount of EUR 12 000 plus default interest from the date of delivery of the present judgment until the payment is made at an annual rate equal to the rate set by the European Central Bank (ECB) for principal refinancing operations, increased by 2 percentage points;*

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

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

([1]) OJ C 354, 26.10.2015 (case initially registered before the European Union Civil Service Tribunal under the number F-121/15 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 24 October 2018 — Bayer v EUIPO — UNI-Pharma (SALOSPIR)

(Case T-261/17) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark SALOSPIR — Earlier EU figurative marks representing coloured stripes and earlier national marks Aspirin — Relative grounds for refusal — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Reputation — Article 8(5) of Regulation No 207/2009 (now Article 8(5) of Regulation 2017/1001) — Use of a sign of more than mere local significance in the course of trade — Article 8(4) of Regulation No 207/2009 (now Article 8(4) of Regulation 2017/1001))

(2018/C 445/22)

Language of the case: English

Parties

Applicant: Bayer AG (Leverkusen, Germany) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Uni-Pharma Kleon Tsetis, Farmakeutika Ergastiria AVEE (Kifisia, Greece) (represented by: C. Chrysanthis, P.-V. Chardalia and A. Vasilogamvrou, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 17 February 2017 (Case R 2444/2017-4), relating to opposition proceedings between Bayer and Uni-Pharma Kleon Tsetis, Farmakeutika Ergastiria.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Bayer AG to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) and by Uni-Pharma Kleon Tsetis, Farmakeutika Ergastiria AVEE in the proceedings before the General Court.*

([1]) OJ C 221, 10.7.2017.

Judgment of the General Court of 24 October 2018 — Deza v Commission

(Case T-400/17) ([1])

(Environment and protection of human health — Regulation (EC) No 1272/2008 — Classification, labelling and packaging of certain substances — Regulation (EU) 2017/776 — Classification of anthraquinone — Substance which is a presumed human carcinogen — Manifest error of assessment — Concept of substance — Legal certainty — Right to property)

(2018/C 445/23)

Language of the case: Czech

Parties

Applicant: Deza, a.s. (Valašské Meziříčí, Czech Republic) (represented by: P. Dejl, lawyer)

Defendant: European Commission (represented by: Z. Malůšková, K. Mifsud-Bonnici and R. Lindenthal, acting as Agents)

Interveners in support of the defendant: Republic of Finland (represented by: S. Hartikainen, acting as Agent), Kingdom of Sweden (represented by: A. Falk, C. Meyer-Seitz, H. Shev, L. Zettergren and A. Alriksson, acting as Agents), European Chemicals Agency (represented by: M. Heikkilä, W. Broere and A. Hautamäki, acting as Agents)

Re:

Application on the basis of Article 263 TFEU seeking the annulment of Commission Regulation (EU) 2017/776 of 4 May 2017 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2017 L 116, p. 1), in so far as it classifies anthraquinone as a presumed human carcinogen.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Deza, a.s. to bear its own costs and to pay the costs incurred by the European Commission.*

3. *Orders the Republic of Finland, the Kingdom of Sweden and the European Chemicals Agency (ECHA) to bear their own costs.*

([1]) OJ C 293, 4.9.2017.

Action brought on 1 October 2018 — Pharma Mar v Commission

(Case T-594/18)

(2018/C 445/24)

Language of the case: English

Parties

Applicant: Pharma Mar, SA (Colmenar Viejo, Spain) (represented by: M. Merola and V. Salvatore, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Decision C(2018) 4831 final of 17 July 2018, refusing marketing authorisation under Regulation (EC) No 726/2004 ([1]) for 'Aplidin — plitidepsin', a medicinal product for human use;

— order the defendant 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 the lack of impartiality of the scientific advisory group on oncology and of their appointment process.

   — The applicant argues that the duty to examine all relevant aspects of a case carefully and impartially has been breached given that the contested decision is based on an opinion issued by experts who are not impartial.

   — The breach of the duty to carry out an impartial examination alleged by the applicant also relates to the appointment of experts by the European Medicines Agency (EMA) in a manner that unduly reduced the plurality of views, which should be considered a precondition for an impartial assessment.

2. Second plea in law, alleging breach of the principle of good administration.

   — The applicant refers to the appointment of experts by the EMA in a manner that unduly reduced the plurality of views and claims that this can be regarded as a breach of the principle of good administration.

3. Third plea in law, alleging infringement of Article 12 of Regulation (EC) No 726/2004 and the principle of equal treatment.

   — The applicant argues that the Commission committed a manifest error of appraisal and wrongly concluded that the efficacy of Aplidin was not properly and sufficiently demonstrated, thereby infringing the said Article 12.

   — In the examination procedure before the EMA, part of the scientific evidence submitted in support of the efficacy of Aplidin was disregarded due to the methodologies applied by the applicant, which is inconsistent with an opinion delivered by an expert working group of the EMA.

   — The methodologies applied in the present case are the same as those accepted by the EMA in a similar case concerning the marketing authorisation procedure of another medicinal product, which indicates that the principle of equal treatment has been breached.

4. Fourth plea in law, alleging infringement of the requirement to provide a statement of reasons.

   — The applicant argues that no statement of reasons has been provided for the decision to disregard the scientific evidence submitted in support of the efficacy of Aplidin, in particular as regards the reasons for departing from the opinion delivered by an expert working group of the EMA.

5. Fifth plea in law, alleging infringement of the right of defence.

   — The applicant argues that it was prevented from effectively exercising its right of defence in relation to a subject-matter that was crucial to assessing Aplidin's efficacy, in particular due to the limited time allowed to prepare for oral explanation meetings.

([1]) Regulation No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1).

Action brought on 28 September 2018 — ZL v EUIPO

(Case T-596/18)

(2018/C 445/25)

Language of the case: English

Parties

Applicant: ZL (represented by: E. Fontes Vila, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Form of order sought

The applicant claims that the Court should:

— annul the decision of 1 December 2017 of the selection board for open competition EUIPO/AD/01/17 which indicated the applicant's results in that competition and confirmed that she had not been placed on the 'reserve list' of successful candidates;

— annul, on a subsidiary basis, as connected decisions, the following: first, the decision of 7 March 2018 of the selection board by which it replied to the applicant's request for review and confirmed the decision of 1 December 2017; second, the decision of 27 June 2018 of the appointing authority which rejected the applicant's complaint of 7 June 2018 and confirmed the decision of 1 December 2017;

— order the defendant to pay the costs.

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 the lack of sufficient legal reasoning and supporting documents in all the correspondence and decisions received from EPSO and/or EUIPO with regard to the open competition in question, in that the applicant could not ascertain whether or not the decisions adversely affecting her were well founded and subject to judicial review, therefore creating legal uncertainty and leaving the applicant defenceless before the administration.

2. Second plea in law, alleging (i) infringement of the applicant's fundamental rights to good administration and access to documents (Article 41 and 42 of the Charter of Fundamental Rights of the European Union; Article 15 of the TFEU; Article 2(1) of Regulation No 1049/2001 ([1])) and of the horizontal principle of transparency, in that the applicant's access to the disputed questions of the verbal reasoning multiple-choice computer-based tests was denied by the appointing authority by claiming that the applicant's allegation challenging the relevance and validity of the said questions was too general but without grounding the specific motives of not meeting the case-law conditions for not granting them; and (ii) infringement of the applicant's right of defence, in that the request of the appointing authority that the disputed questions be challenged in more detail is impracticable for the applicant, creating a particular vulnerability in terms of having to provide an impossible proof.

3. Third plea in law, alleging infringement of the applicant's right of defence and of the principles of merit and capacity in the competition in question, transparency in the free access to public service, and of fair and equal treatment, in that the applicant could not allege a material irregularity of the disputed questions based on their poor or erroneous formulation (e.g. translation problems) after obtaining her competition results. A candidate should always be able to challenge the fact of having been subject to material errors in questions at any point of the competition process, particularly following the release of the results. The applicant further argues that poor translations could place candidates who choose the source language of the verbal computer-based tests at a clear advantage.

4. Fourth plea in law, alleging that the contested decision of 1 December 2017 is vitiated by a manifest error in the competition process, in that the disputed questions of the verbal reasoning computer-based tests were subject to a material irregularity.

(1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 9 October 2018 — Google and Alphabet/Commission

(Case T-604/18)

(2018/C 445/26)

Language of the case: English

Parties

Applicants: Google LLC (Mountain View, California, United States), Alphabet, Inc. (Mountain View) (represented by: N. Levy, Solicitor, P. Stuart, Barrister, J. Schindler and A. Lamadrid de Pablo, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the Commission's decision of 18 July 2018 in case COMP/AT.40099 —Google Android;

— in the alternative, annul or reduce the fine imposed on the applicants in exercise of the Court's unlimited jurisdiction; and

— in any event, order the Commission to bear the applicants' costs and expenses in connection with these proceedings.

Pleas in law and main arguments

The present action seeks the annulment of the Commission's decision C(2018) 4761 final of 18 July 2018 relating to a proceeding under Article 102 TFEU and Article 54 of the EEA Agreement (AT.40099 — Google Android).

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

1. First plea in law, alleging that the contested decision errs in its assessments of market definition and dominance.

   — In this regard, the applicants submit that the contested decision errs in finding Android dominant.

   — The applicants further claim that the contested decision errs in finding Play dominant.

   — The applicants also put forward that the contested decision's claim that Google is dominant in general search services provided to users does not fit its theory of abuse, which relates to search apps licensed to original equipment manufacturers.

2. Second plea in law, alleging that the contested decision errs in finding Google's mobile application distribution agreement's preinstallation conditions abusive.

   — In this regard, the applicants submit that the contested decision fails to demonstrate that the challenged preinstallation conditions were likely to foreclose competition.

   — The applicants further claim that the contested decision wrongly ignores that the preinstallation conditions are objectively justified because they enable Google to provide the Android platform for free.

3. Third plea in law, alleging that the contested decision errs in finding that the sole preinstallation condition in Google's portfolio-based revenue-sharing agreements was abusive.

4. Fourth plea in law, alleging that the contested decision errs in finding that it was abusive for Google to condition Play and Google Search app licenses on the anti-fragmentation agreement's anti-fragmentation obligations.

   — In this regard, the applicants submit that the contested decision errs in finding that the anti-fragmentation obligations are likely to restrict competition.

   — The applicants further claim that the contested decision fails to take into account that the anti-fragmentation obligations are objectively justified because they ensure compatibility.

5. Fifth plea in law, alleging that the contested decision infringed the applicants' rights of defence.

   — In this regard, the applicants submit that the Commission improperly put its 'as efficient competitor' analysis to the applicants in letters of facts and refused them an oral hearing.

   — The applicants further claim that the Commission infringed the applicants' rights of access to file.

6. Sixth plea in law, alleging that the contested decision errs in imposing a fine and in calculating that fine.

   — In this regard, the applicants submit that the fine is unlawful because it fails to consider Google's lack of intent or negligence.

   — The applicants further claim that the fine is unlawful because it does not respect the principle of proportionality.

   — In the alternative, the applicants also put forward that the contested decision errs in calculating the fine.

Action brought on 5 October 2018 — Fujifilm Recording Media v EUIPO — iTernity GmbH (d:ternity)

(Case T-609/18)

(2018/C 445/27)

Language in which the application was lodged: German

Parties

Applicant: Fujifilm Recording Media GmbH (Kleve, Germany) (represented by: R. Härer, C. Schulze, C. Weber, H. Ranzinger und C. Gehweiler, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: iTernity GmbH (Freiburg, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'd:ternity' — EU trade mark No 11 152 154

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 25 July 2018 in Case R 2324/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— in the alternative, declare that there is no need to adjudicate on the dispute in the main proceedings;

— order EUIPO and the other party to pay the costs incurred before the Court and the Board of Appeal.

Pleas in law

— Infringement of Articles 18 and 64 of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 18 October 2018 — Gres de Aragón/EUIPO (GRES ARAGÓN)

(Case T-624/18)

(2018/C 445/28)

Language of the case: Spanish

Parties

Applicant: Gres de Aragón (Alcalñiz, Spain) (represented by: J. Learte Álvarez, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union figurative mark GRES ARAGÓN — Application for registration No 16 311 938

Contested decision: Decision of the First Board of Appeal of EUIPO of 16 August 2018 in Case R 2269/2017-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision refusing European Union trade mark application No 16 311 938 GRES ARAGÓN in connection with some of the goods/services covered by the application;

— Resume the processing of the application in respect of all the goods and services covered by the original application;

— order EUIPO to pay the costs.

Plea in law

Infringement of Article 7(1)(b) and (c), and Article 7(2) and (3) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 18 October 2018 — mobile.de v EUIPO (Representation of a car in a speech bubble)

(Case T-629/18)

(2018/C 445/29)

Language in which the application was lodged: German

Parties

Applicant: mobile.de GmbH (Dreilinden, Germany) (represented by: T. Lührig, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU figurative mark (Representation of a car in a speech bubble) — Application No 15 598 931

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 7 August 2018 in Case R 2653/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 49(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of the second sentence of Article 71(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of the fourth sentence of Article 68(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in conjunction with Article 23(1)(d) of Commission Delegated Regulation (EU) 2018/625;

— Infringement of the fourth sentence of Article 68(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in conjunction with Article 23(1)(e) and Article 22(1)(b) of Commission Delegated Regulation (EU) 2018/625.

Action brought on 17 October 2018 — Herholz Vertrieb v EUIPO (#)

(Case T-631/18)

(2018/C 445/30)

Language in which the application was lodged: German

Parties

Applicant: Herholz Vertrieb GmbH & Co. KG (Ahaus, Germany) (represented by: D. Sprenger, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark # — Application for registration No 16 967 267

Contested decision: Decision of the Second Board of Appeal of EUIPO of 22 August 2018 in Case R 445/2018-2

Form of order sought

The applicant claims that the Court should:

— vary the contested decision by registering the EU trade mark as applied for;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

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