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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Reference for a preliminary ruling from the Supreme Court of the Slovak Republic lodged on 21 October 2010 — TANOARCH s.r.o. v Tax Directorate of the Slovak Republic

(Case C-504/10)

(2011/C 46/02)

*Language of the case: Slovak***Referring court**

The Supreme Court of the Slovak Republic

Parties to the main proceedings*Applicant:* TANOARCH s.r.o.*Defendant:* Tax Directorate of the Slovak Republic**Questions referred**

1. Does Article 2(1) of the Sixth Council Directive 77/388/EEC⁽¹⁾ of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax permit a provision whereby a taxpayer may deduct, from his own tax liability, tax on goods and services which he uses for the purposes of his business as a taxpayer, if that tax has been charged to him by another inland taxpayer, on goods and services supplied or to be supplied, in circumstances where the plaintiff, in his capacity as co-applicant in respect of an invention on which a patent has yet to be granted, already owns, as a matter of law, the right independently to use the invention which is the subject-matter of the patent as a whole?
2. Does the Sixth Directive permit the interpretation that a taxpayer's existing legal right independently to use a patent results in the legal impossibility of using a service for supplies of goods and services as a taxpayer, and that this results in the legal consumption of the service acquired?

3. Is the abuse of a taxpayer's right to deduct input VAT under the Judgment of the Court of Justice of the European Communities of 21 February 2006, Case C-255/02 *Halifax and Others*, affected by the fact that, regarding the substance of the matter, the invention has not yet been registered as a patent and only parts thereof are operated?

⁽¹⁾ OJ 1977 L 145, p. 1

Appeal brought on 22 November 2010 by Stichting Al-Aqsa against the judgment delivered by the General Court (Seventh Chamber) on 9 September 2010 in Case T-348/07 Al-Aqsa v Council of the European Union

(Case C-539/10 P)

(2011/C 46/03)

*Language of the case: Dutch***Parties**

Appellant: Stichting Al-Aqsa (represented by: A.M. van Eik and M.J.G. Uiterwaal, advocaten)

Other parties to the proceedings: Council of the European Union, Kingdom of the Netherlands, European Commission

Form of order sought

- Set aside the judgment delivered by the General Court on 9 September 2010 in Case T-348/07 in so far as the appellant puts forward grounds of appeal and arguments directed against the grounds of that judgment, and give a new ruling upholding the claims put forward at first instance on improved grounds as compared with those on which the judgment under appeal is based;

- Order the Council of the European Union to pay the costs of the proceedings at first instance and of this appeal.

Pleas in law and main arguments

1. In its judgment of 9 September 2010 (in Case T-348/07), the General Court found that, since the Sanctieregeling (Sanctieregeling terrorisme 2003) [Regulation on sanctions for the suppression of terrorism ('the Sanctieregeling')] on the basis of which the appellant had been included in the list had been repealed, an order of the court hearing an application for interim measures did not provide an adequate basis for continuing to include the appellant in the list. The appellant (hereinafter also referred to as 'Al-Aqsa') shares those views of the General Court.
2. However, the General Court included certain grounds in its judgment on the basis of which certain pleas put forward by Al-Aqsa were rejected as unfounded. Thus, the General Court held that the Sanctieregeling, in conjunction with the order of the court hearing the application for interim measures, can be regarded as a decision of a competent national authority meeting the definition contained in Article 1(4) of the CP (Common Position 2001/931). Further, the General Court found that 'knowledge' within the meaning of Article 1(3)(k) of the CP, and as required by Article 1(4) of Regulation No 2580/2001,⁽¹⁾ can be established in regard to Al-Aqsa.
3. The appellant takes issue with those grounds and has therefore brought this appeal. Before setting out its grounds of appeal, the appellant addresses the admissibility of the appeal.
4. The appellant's grounds of appeal can be summarised as follows. First, the General Court exceeded its powers of review by itself determining the evidence that was to be regarded as a decision within the meaning of Article 1(4) of the CP (first ground of appeal).
5. Further, the General Court erred in deciding that the Sanctieregeling — whether or not in conjunction with the order of the court hearing the application for interim measures — can be regarded as a decision within the meaning of Article 1(4) of the CP (second ground of appeal).
6. Finally, the General Court exceeded its powers by itself interpreting the order, or in any event it made a manifest error of assessment in interpreting the order (third ground of appeal).
7. Consequently, Al-Aqsa's application should be granted and the contested decisions should be annulled on improved grounds as compared with those on which the judgment under appeal is based.

⁽¹⁾ Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70).

Reference for a preliminary ruling from the Cour de Cassation (France) lodged on 22 November 2010 — Refcomp SpA v Axa Corporate Solutions Assurance SA, Axa France IARD, Emerson Network, Climaveneta SpA

(Case C-543/10)

(2011/C 46/04)

Language of the case: French

Referring court

Cour de Cassation

Parties to the main proceedings

Applicant: Refcomp SpA

Defendants: Axa Corporate Solutions Assurance, Axa France IARD, Emerson Network, Climaveneta SpA

Questions referred

1. Is a clause conferring jurisdiction which has been agreed, in a chain of contracts under Community law, between a manufacturer of goods and a buyer in accordance with Article 23 of Regulation No 44/2001 of 20 December 2000⁽¹⁾ effective as against the sub-buyer and, if so, under what conditions?
2. Is the clause conferring jurisdiction effective as against the sub-buyer and its subrogated insurers even if Article 5(1) of Regulation No 44/2001 of 20 December 2000 does not apply to the sub-buyer's action against the manufacturer, as the Court held in its judgment of 17 June 1992 in *Handte* ⁽²⁾?

⁽¹⁾ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1)

⁽²⁾ Judgment of 17 June 1992, *Handte*, C-26/91, ECR 1992, p. I-03967

Appeal brought on 24 November 2010 by the Kingdom of the Netherlands against the judgment delivered by the General Court (Seventh Chamber) on 9 September 2010 in Case T-348/07 *Stichting Al-Aqsa v Council of the European Union*

(Case C-550/10 P)

(2011/C 46/05)

Language of the case: Dutch

Parties

Appellant: Kingdom of the Netherlands (represented by: C.M. Wissels and M. Noort, Agents)

Other parties to the proceedings: Stichting Al-Aqsa, Council of the European Union, European Commission

Form of order sought

- set aside the judgment under appeal in Case T-348/07 and refer the case back to the General Court; and
- order the other party to the proceedings to pay the costs.

Pleas in law and main arguments

The General Court misinterpreted Article 1(4) and (6) of Common Position 2001/931 and Article 2(3) of Regulation No 2580/2001⁽¹⁾ in finding that the order of the court hearing the application for interim measures could no longer, following the repeal of the *Sanctieregeling terrorisme 2003* (2003 Netherlands regulation on sanctions for the suppression of terrorism), serve as a basis for placing Al-Aqsa on the EU asset-freezing list.

⁽¹⁾ Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70).

Appeal brought on 25 November 2010 by Éditions Odile Jacob SAS against the judgment delivered by the General Court (Sixth Chamber) on 13 September 2010 in Case T-279/04 *Éditions Jacob v Commission*

(Case C-551/10 P)

(2011/C 46/06)

Language of the case: French

Parties

Appellant: Éditions Odile Jacob SAS (represented by: O. Fréget, M. Struys, M. Potel-Saville and L. Eskenazi, *avocats*)

Other parties to the proceedings: European Commission, Lagardère SCA

Form of order sought

- set aside the judgment of 13 September 2010 in Case T-279/04 *Éditions Odile Jacob SAS v Commission* dismissing Odile Jacob's action, and

- order the Commission to pay the costs, including those borne by Odile Jacob at first instance, and those incurred by that party in respect of this appeal;

Pleas in law and main arguments

The appellant puts forward four grounds in support of its appeal.

By its first ground of appeal, Éditions Odile Jacob alleges an error in the application of the concept of a concentration within the meaning of Regulation 4064/89⁽¹⁾ and an error in the legal classification of the holding; the relevant criteria for assessing control under Article 3(3) of Regulation 4064/89 were thereby disregarded. In the first place, by isolating the holding, by which Natexis Banques Populaires (NBP) temporarily acquired Vivendi Universal Publishing, from the legal arrangement which led to Lagardère's acquiring control of VUP, the General Court failed to have regard to the general objective of control of concentrations which is to deal with the economic reality underlying a group of legal transactions. In so doing, the General Court not only created a new exception to Regulation 4064/89, enabling holdings, whatever the undertaking being used as a vehicle charged with holding the assets to be divested, to escape control of concentrations, but also negates the effectiveness of Article 3(5)(a) of that regulation.

In the second place, by excluding the classification of the holding under Article 3(5)(a) of Regulation 4064/89, the General Court in any event applied Article 3(3) of that regulation in an incorrect and truncated manner, that application being limited to a reading only of the contractual elements which structured the holding at issue.

By its second ground of appeal, the appellant alleges an error of law in so far as the General Court failed to draw the legal consequences of the procedural infringements committed by the Commission. By shielding from any review those infringements of Regulation 4064/89, relating inter alia to the infringement of the obligation to suspend the concentration, to the absence of notification of such a kind as to form the basis of the Commission's competence and to fraud by apparent substitution of the purchaser, the General Court validated a contravention of the law equivalent to a misuse of powers by the Commission.

By its third ground of appeal, Éditions Odile Jacob alleges that the General Court erred in law by failing to sanction by annulment essential procedural requirements vitiating the Commission's decision. That ground of appeal relates in particular to the failure to provide a statement of reasons in relation to the classification of the holding at issue and to the applicability of Article 3(5)(a) of Regulation 4064/89 to a part of that holding and alleges infringement of the principles of equality, legal certainty and the protection of legitimate expectations.

By its fourth and final ground of appeal, the appellant complains that the General Court committed errors of law and manifest errors of assessment in that it disregarded the relevant legal criteria for assessing the creation or strengthening of a dominant position and whether the commitments were appropriate in relation to the Commission's findings.

(¹) Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1).

Appeal brought on 25 November 2010 by the European Commission against the judgment delivered by the General Court (Sixth Chamber) on 13 September 2010 in Case T-452/04 *Éditions Jacob v European Commission*

(Case C-553/10 P)

(2011/C 46/07)

Language of the case: French

Parties

Appellant: European Commission (represented by: A. Bouquet, O. Beynet and S. Noë, Agents)

Other parties to the proceedings: Éditions Odile Jacob SAS, Wendel Investissement SA, Lagardère SCA

Form of order sought

- set aside the judgment of 13 September 2010 in Case T-452/04 *Éditions Odile Jacob SAS v Commission* in so far as it annulled Commission Decision D(2004) 203365 of 30 July 2004 relating to the approval of Wendel Investissement as purchaser of the assets sold in accordance with Commission Decision 2004/422/EC of 7 January 2004 declaring a concentration compatible with the common market and the functioning of the EEA Agreement (Case COMP/M.2978 — Lagardère/Natexis/VUP); (¹)
- rule, if appropriate, definitively on the issues which form the subject-matter of this appeal and dismiss the action for annulment, and
- order Éditions Jacob to pay the costs of both instances.

Pleas in law and main arguments

The appellant puts forward three grounds in support of its appeal.

By its first ground of appeal, the Commission submits that the General Court erred in law in that it failed to examine the

consequences of the possible lack of independence of the trustee vis-à-vis Editis in respect of the trustee's duties in relation to Wendel. In the appellant's submission, the lack of independence of a person responsible for assessing a candidate is of no legal significance unless it is established that that person took account in his assessment of an interest other than that of the proper exercise of his duties.

By its second ground of appeal, the appellant alleges that the General Court erred in law and misinterpreted the facts in so far as it found that the trustee's report had a decisive influence on the contested decision, whereas, in actual fact, even if the Commission is required to take it into account, it is not bound by the trustee's opinion and is still required to undertake the necessary investigation in order to ascertain that the purchaser does indeed satisfy the approval criteria.

By its third ground of appeal, which is in two parts, the Commission alleges, first, a misinterpretation of the law as regards the relevance of the plea raised by the applicant at first instance on the validity of the contested decision and, second, an infringement of the obligation to state reasons in that connection.

(¹) OJ 2004 L 125, p. 54.

Appeal brought on 26 November 2010 by Lagardère SCA against the judgment of the General Court (Sixth Chamber) delivered on 13 September 2010 in Case T-452/04 *Éditions Jacob v European Commission*

(Case C-554/10 P)

(2011/C 46/08)

Language of the case: French

Parties

Appellant: Lagardère SCA (represented by: A. Winckler, F. de Bure et J.-B. Pinçon, avocats)

Other parties to the proceedings: Éditions Odile Jacob SAS, European Commission, Wendel Investissement SA

Form of order sought

- set aside the judgment of 13 September 2010 in Case T-452/04 in so far as that judgement annulled the European Commission's Decision of 30 July 2004 approving Wendel Investissement as purchaser of the assets sold in merger control procedure No COMP/M.2978 — Lagardère/Natexis/VUP;

- dismiss Odile Jacob's action brought before the General Court against that decision;
- order Odile Jacob to pay all the costs of these proceedings, both at first instance and in this appeal.

Pleas in law and main arguments

The appellant puts forward two grounds in support of its appeal.

By its first ground of appeal, Lagardère alleges that the General Court erred in law by relying on the unlawfulness of the decision approving the trustee as a basis for annulling the approval decision.

By its second ground of appeal, which contains four parts, the appellant submits that the General Court erred in law in holding that the presence of the trustee's representative on the executive board of Editis as an independent third party could justify the annulment of the approval decision. That flows from the misinterpretation of certain facts, manifest failures to state reasons and several errors of law: the General Court thus erred in law by interpreting incorrectly the concept of independence (first part); the General Court failed to show in its statement of reasons how the links between the trustee's representative and Editis could have vitiated the content of the report submitted by the trustee to the Commission (second part); the General Court misinterpreted the facts and vitiated the judgment under appeal by a manifest failure to state reasons in finding that the trustee's report had exercised a 'decisive influence' on the approval decision (third part) and, lastly, the General Court erred in annulling the approval decision without showing how that decision would have differed in content in the absence of the alleged irregularities (fourth part).

Reference for a preliminary ruling from the Tribunal de Grande Instance de Chartres (France) lodged on 29 November 2010 — Michel Bourges-Maunoury, Marie-Louise Bourges-Maunoury (née Heintz) v Direction des Services Fiscaux d'Eure et Loir

(Case C-558/10)

(2011/C 46/09)

Language of the case: French

Referring court

Tribunal de Grande Instance de Chartres

Parties to the main proceedings

Applicants: Michel Bourges-Maunoury, Marie-Louise Bourges-Maunoury (née Heintz)

Defendant: Direction des Services Fiscaux d'Eure et Loir

Question referred

Is it contrary to the second paragraph of Article 13 of Chapter V of the Protocol on the Privileges and Immunities of the European Communities, ⁽¹⁾ annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities, for the entirety of a taxpayer's income, including Community income, to be taken into account in calculating the cap on wealth tax ('impôt de solidarité sur la fortune')?

⁽¹⁾ OJ 1967 L 152, p. 13, now Article 12 of Chapter V of the Protocol on the Privileges and Immunities of the European Union (OJ 2010 C 83, p. 266).

Action brought on 3 December 2010 — European Commission v Republic of Poland

(Case C-569/10)

(2011/C 46/10)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: K. Herrmann, Agent)

Defendant: Republic of Poland

Form of order sought

— declare that, by not adopting the measures necessary to ensure that access to activities relating to the prospection, exploration and production of hydrocarbons should be free of all discrimination as between interested undertakings and that the authorisations to carry out those activities should be allocated in accordance with a procedure under which all interested undertakings are able to submit applications and in accordance with criteria which are published in the *Official Journal of the European Union* prior to the beginning of the period in which applications must be submitted, the Republic of Poland has failed to comply with its obligations under Articles 2(2), 3(1) and 5(1) and (2) of Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons; ⁽¹⁾

— order the Republic of Poland to pay the costs of the proceedings.

Pleas in law and main arguments

The Commission raises three heads of complaint alleging failure on the part of the Republic of Poland to comply with the provisions of Directive 94/22/EC.

First, in the view of the Commission, the Polish legislation on 'Geological Work and Mining' (Prawo geologiczne i górnictwo) and the implementing regulations giving effect to that legislation set out requirements with which any interested undertaking must comply at the time when it applies for an authorisation for the prospection, exploration and production of hydrocarbons and which place a number of undertakings already operating within Polish territory in a more favourable position than other undertakings, thereby infringing the principle of equal access to those activities.

Second, the Polish legislation does not subject the whole of the procedure governing the granting of authorisation for the prospection, exploration and production of hydrocarbons to the adjudication procedure required pursuant to Article 3(2) of Directive 94/22/EC. Polish law makes the prospection, exploration and production of hydrocarbons subject to the acquisition of a mining permit and a concession. The acquisition of a mining permit alone is, as a rule, preceded by a prior adjudication procedure, subject, however, to the reservation of a two-year right of priority for an undertaking which has identified and documented a deposit of hydrocarbons and has prepared geological documentation with the precision required for the purpose of obtaining a concession to extract such hydrocarbons.

Third, in the view of the Commission, the adjudication of applications submitted for the purpose of acquiring an authorisation for the prospection, exploration and production of hydrocarbons is not conducted exclusively on the basis of the criteria set out in Article 5(1) of Directive 94/22/EC. Furthermore, not all of the criteria governing the appraisal of an application are generally accessible, that is to say, published in the *Official Journal of the European Union*.

(¹) OJ 1994 L 164, p. 3.

Reference for a preliminary ruling from the Tribunale di Bolzano (Italy) lodged on 7 December 2010 — Kamberaj Servet v Istituto Per l'Edilizia Sociale della Provincia autonoma di Bolzano (IPES), Giunta della Provincia Autonoma di Bolzano, Provincia Autonoma di Bolzano

(Case C-571/10)

(2011/C 46/11)

Language of the case: Italian

Referring court

Tribunale di Bolzano

Parties to the main proceedings

Applicant: Servet Kamberaj

Defendants: Istituto Per l'Edilizia Sociale della Provincia autonoma di Bolzano (IPES), Giunta della Provincia Autonoma di Bolzano, Provincia Autonoma di Bolzano

Questions referred

1. Does the principle of the primacy [*principe de primauté*] of European Union law oblige a national court to give full and immediate effect to provisions of European Union law having direct effect, by disapplying provisions of domestic law in conflict with European Union law even if they were adopted in accordance with fundamental principles of the Member State's constitutional system?
2. When there is a conflict between the provision of domestic law and the European Convention on Human Rights ('the ECHR'), does the reference to the latter in Article 6 TEU oblige the national court to apply directly Articles 14 [ECHR] and 1 of Additional Protocol No 12 [to the ECHR], disapplying the incompatible source of domestic law, without having first to raise the issue of constitutionality before the national constitutional court?
3. Does European Union law, in particular, Articles 2 and 6 TEU, Articles 21 and 34 of the Charter [of Fundamental Rights of the European Union] and Directives 2000/43/EC and 2003/109/EC preclude a provision of national [more correctly: regional] law, such as that contained in Article 15(3) [more correctly: 15(2)] of Presidential Decree No 670/1972 in conjunction with Articles 1 and 5 of Provincial Law No 13 of 1998 and Decision No 1865 of the Giunta Provinciale of 20 July 2009, inasmuch as that provision, with regard to the allowances concerned, in particular, so-called 'housing benefit', attaches importance to nationality by affording to long-term resident workers not belonging to the Union or to stateless persons treatment worse than that afforded to resident Community nationals (whether or not Italian)?

If those questions [1 to 3] should be answered in the affirmative:

4. In the case of an infringement of general principles of the Union, such as the prohibition of discrimination and the requirement of legal certainty, when there exists national implementing legislation permitting the court to 'order the cessation of the damaging conduct and adopt any other suitable measure, according to the circumstances and the effects of the discrimination', requiring the court to 'order the discriminatory conduct, behaviour or action, if still subsisting, to cease and its effects to be eliminated' and permitting the court to order 'a plan for the suppression of the discrimination found to exist, in order to prevent its repetition, within the period fixed in the measure', must Article 15 of Directive 2000/43/EC, in so far as it provides that sanctions must be effective, proportionate and dissuasive, be interpreted as including, in discrimination found to exist and effects to be eliminated, and in order to avoid unjustified reverse discrimination, all infringements affecting the persons discriminated against, even if they do not form part of the dispute?

If the previous question [4] should be answered in the affirmative:

5. Is it contrary to European Union law, in particular, to Articles 2 and 6 TEU, Articles 21 and 34 of the Charter and Directives 2000/43/EC and 2003/109/EC, for a provision of national [more correctly: provincial] law to require of non-Community nationals only and not of Community nationals also (whether or not Italian), who receive equal treatment merely in respect of the obligation to have resided for more than 5 years in the territory of the province, the further condition that they should have completed three years of work in order to be eligible for housing benefit?
6. Is it contrary to European Union law, in particular, to Articles 2 and 6 TEU, Articles 21 and 34 of the Charter and Directives 2000/43/EC and 2003/109/EC, for a provision of national [more correctly: provincial] law to require Community nationals (whether or not Italian) to make a declaration that they ethnically belong to or elect to join one of the three linguistic groups of the Alto Adige/Südtirol in order to be eligible for housing benefit?
7. Is it contrary to European Union law, in particular, to Articles 2 and 6 TEU, and to Articles 18, 45 and 49 TFEU in conjunction with Articles 1, 21 and 34 of the Charter, for a provision of national [more correctly: provincial] law to impose on Community nationals (whether or not Italian) the obligation to have resided or worked in the territory of the province for at least five years in order to be eligible for housing benefit?

Reference for a preliminary ruling from the Curtea de Apel Timișoara (Romania) lodged on 8 December 2010 —
Sergiu Alexandru Micșă v Administrația Finanțelor
Publice Lugoj, Direcția Generală a Finanțelor Publice
Timiș, Administrația Fondului pentru Mediu

(Case C-573/10)

(2011/C 46/12)

Language of the case: Romanian

Referring court

Curtea de Apel Timișoara

Parties to the main proceedings

Applicant: Sergiu Alexandru Micșă

Defendants: Administrația Finanțelor Publice Lugoj, Direcția Generală a Finanțelor Publice Timiș, Administrația Fondului pentru Mediu

Questions referred

1. Must Article 110 TFEU be interpreted as meaning that it precludes exemption from payment of pollution tax on the first registration in the territory of a Member State of vehicles with specific, precisely designated, technical characteristics where other vehicles are subject to payment of the tax under national provisions.
2. If Article 110 TFEU precludes the exemption referred to in the first question only in certain circumstances, do such circumstances include a situation in which all, the majority or a significant number of motor vehicles produced on national territory have technical characteristics which entail the exemption (bearing in mind that such characteristics are also found in motor vehicles produced in other Member States of the EU and that the exemption applies to those, too).
3. If the second question is answered in the affirmative, what are the characteristics of a product which make it similar, within the meaning of Article 110 TFEU, to a motor vehicle which has all the following characteristics:
 - (a) it is new (or has not previously been sold for a purpose other than resale or supply and therefore has never been registered) or it is second-hand and has been registered in a Member State of the European Union during the period from 15 December 2008 to 31 December 2009 inclusive;
 - (b) it was designed and built for the transport of passengers and has, in addition to the driver's seat, at most eight seats (vehicles in category M1, under the Romanian legislation) or was designed and built for the transport of goods with a maximum weight of 3.5 tons (vehicles in category NI, under the Romanian legislation);
 - (c) it falls within pollution class Euro 4;
 - (d) it has a cylinder capacity of less than 2 000 cc (a characteristic to be taken into account only in the case of vehicles in category MI).

GENERAL COURT

Judgment of the General Court of 16 December 2010 — Fidelio v OHIM (Hallux)

(Case T-286/08) ⁽¹⁾

(Community trade mark — Application for Community word mark Hallux — Absolute ground for refusal — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009))

(2011/C 46/13)

Language of the case: German

Parties

Applicant: Fidelio KG (Linz, Austria) (represented by: M. Gail, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 21 May 2008 (Case R 632/2007-4) relating to registration of the word sign 'Hallux' as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Fidelio KG to pay the costs.

⁽¹⁾ OJ C 247, 27.9.2008.

Judgment of the General Court of 17 December 2010 — Chocoladefabriken Lindt & v OHIM (Shape of a chocolate rabbit with a red ribbon)

(Case T-336/08) ⁽¹⁾

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of a chocolate rabbit with a red ribbon — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009) — Lack of distinctive character acquired through use — Article 7(3) of Regulation (EC) No 40/94 (now Article 7(3) of Regulation (EC) No 207/2009))

(2011/C 46/14)

Language of the case: German

Parties

Applicant: Chocoladefabriken Lindt & (Kilchberg, Switzerland) (represented by: R. Lange, E. Schalast and G. Hild, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 11 June 2008 (Case R 1332/2005-4), concerning an application for registration as a Community trade mark of a three-dimensional sign consisting of the shape of a chocolate rabbit with a red ribbon.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Chocoladefabriken Lindt & Sprüngli AG to pay the costs.

⁽¹⁾ OJ C 260, 11.10.2008.

Judgment of the General Court of 17 December 2010 — Chocoladefabriken Lindt & Sprüngli v OHIM (Representation of a reindeer made of chocolate)

(Case T-337/08) ⁽¹⁾

(Community trade mark — Application for a three-dimensional Community trade mark — Representation of a reindeer made of chocolate — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009))

(2011/C 46/15)

Language of the case: German

Parties

Applicant: Chocoladefabriken Lindt & Sprüngli AG (Kilchberg, Switzerland) (represented by: R. Lange, E. Schalast and G. Hild, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 12 June 2008 (Case R 780/2005-4), concerning an application for registration as a Community trade mark of a three-dimensional sign consisting of the representation of a reindeer made of chocolate.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Chocoladefabriken Lindt & Sprüngli AG to pay the costs.

⁽¹⁾ OJ C 260, 11.10.2008.

Judgment of the General Court of 16 December 2010 — Rubinstein and L'Oréal v OHIM — Allergan (BOTOLIST and BOTOCYL)

(Joined cases T-345/08 and T-357/08) ⁽¹⁾

(Community trade mark — Invalidity proceedings — Community word marks BOTOLIST and BOTOCYL — Earlier national figurative and word marks BOTOX — Relative ground for refusal — Damage to reputation — Article 8(5) of Regulation (EC) No 40/94 (now Article 8(5) of Regulation (EC) No 207/2009) — Obligation to state the reasons on which the decision is based — Article 73 of Regulation No 40/94 (now Article 75 of Regulation No 207/2009))

(2011/C 46/16)

Language of the case: English

Parties

Applicants: Helena Rubinstein SNC (Paris, France) (represented by: A. von Mühlendahl and J. Pagenberg, lawyers) (Case T-345/08); and L'Oréal SA (Paris) (represented by: A. von Mühlendahl and J. Pagenberg, lawyers) (Case T-357/08)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM: Allergan, Inc. (Irvine, California, United States)

Re:

ACTIONS brought against, in Case T-345/08, the decision of the First Board of Appeal of OHIM of 28 May 2008 (Case R 863/2007-1), relating to cancellation proceedings between Allergan, Inc. and Helena Rubinstein SNC, and, in Case T-357/08, the decision of the First Board of Appeal of OHIM of 5 June 2008 (Case R 865/2007-1), relating to cancellation proceedings between Allergan, Inc. and L'Oréal SA

Operative part of the judgment

The Court:

1. Dismisses the actions;
2. Orders Helena Rubinstein SNC to pay the costs in Case T-345/08;
3. Orders L'Oréal SA to pay the costs in Case T-357/08.

⁽¹⁾ OJ C 272, 25.10.2008.

Judgment of the General Court of 17 December 2010 — Chocoladefabriken Lindt & Sprüngli v OHIM (Representation of a small bell with a red ribbon)

(Case T-346/08) ⁽¹⁾

(Community trade mark — Application for a three-dimensional Community trade mark — Representation of a small bell with a red ribbon — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009))

(2011/C 46/17)

Language of the case: German

Parties

Applicant: Chocoladefabriken Lindt & Sprüngli AG (Kilchberg, Switzerland) (represented by: R. Lange, E. Schalast and G. Hild, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 13 June 2008 (Case R 943/2007-4), concerning an application for registration as a Community trade mark of a three-dimensional sign consisting of the representation of a small bell with a red ribbon.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Chocoladefabriken Lindt & Sprüngli AG to pay the costs.

⁽¹⁾ OJ C 260, 11.10.2008.

Judgment of the General Court of 17 December 2010 — Chocoladefabriken Lindt & Sprüngli v OHIM (Shape of a chocolate rabbit)

(Case T-395/08) ⁽¹⁾

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of a chocolate rabbit — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009) — Lack of distinctive character acquired through use — Article 7(3) of Regulation (EC) No 40/94 (now Article 7(3) of Regulation (EC) No 207/2009))

(2011/C 46/18)

Language of the case: German

Parties

Applicant: Chocoladefabriken Lindt & Sprüngli AG (Kilchberg, Switzerland) (represented by: R. Lange, E. Schalast and G. Hild, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 18 July 2008 (Case R 419/2008-4), concerning an application for registration as a Community trade mark of a three-dimensional sign consisting of the shape of a chocolate rabbit.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Chocoladefabriken Lindt & Sprüngli AG to pay the costs.

⁽¹⁾ OJ C 313, 6.12.2008.

Judgment of the General Court of 17 December 2010 — Storck v OHIM (Shape of a chocolate mouse)

(Case T-13/09) ⁽¹⁾

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of a chocolate mouse — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009) — Rights of the defence)

(2011/C 46/19)

Language of the case: German

Parties

Applicant: August Storck KG (Berlin, Germany) (represented by: P. Goldenbaum, T. Melchert and I. Rohr, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially G. Schneider, then G. Schneider and R. Manea, acting as Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 12 November 2008 (Case R 185/2006-4), concerning an application for registration as a Community trade mark of a three-dimensional sign consisting of the shape of a chocolate mouse.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Chocoladefabriken Lindt & Sprüngli AG to pay the costs.

⁽¹⁾ OJ C 69, 21.3.2009.

Judgment of the General Court of 16 December 2010 — Ilink Kommunikationssysteme v OHIM (ilink)

(Case T-161/09) ⁽¹⁾

(Community trade mark — Application for Community word mark ilink — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009))

(2011/C 46/20)

Language of the case: German

Parties

Applicant: Ilink Kommunikationssysteme GmbH (Berlin, Germany) (represented by: B. Schütze, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 5 February 2009 (Case R 1849/2007-4), relating to registration of the word sign 'ilink' as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Ilink Kommunikationssysteme GmbH to pay the costs.

⁽¹⁾ OJ C 153 of 4.7.2009.

Judgment of the General Court of 17 December 2010 — Amen Corner v OHIM — Comercio Electrónico Ojal (SEVE TROPHY)

(Case T-192/09) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for Community figurative mark SEVE TROPHY — Earlier Community figurative marks Seve Ballesteros Trophy and SEVE TROPHY — Relative grounds for refusal — Lack of similarity of the goods and of the services — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — No unfair advantage taken of or detriment caused to the distinctive character or repute of the earlier marks — Article 8(5) of Regulation No 40/94 (now Article 8(5) of Regulation No 207/2009))

(2011/C 46/21)

Language of the case: Spanish

Parties

Applicant: Amen Corner, SA (Madrid, Spain) (represented by: J.A. Calderón Chavero and T. Villate Consonni, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Comercio Electrónico Ojal, SL (Madrid)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 5 March 2009 (Case R 462/2008-2) relating to opposition proceedings between Amen Corner, SA and Comercio Electrónico Ojal, SL.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Amen Corner, SA to pay the costs.

⁽¹⁾ OJ C 167, 18.7.2009.

Judgment of the General Court of 16 December 2010 — Deutsche Steinzeug Cremer & Breuer v OHIM (CHROMA)

(Case T-281/09) ⁽¹⁾

(Community trade mark — Application for the Community word mark CHROMA — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2011/C 46/22)

Language of the case: German

Parties

Applicant: Deutsche Steinzeug Cremer & Breuer AG (Frechen, Germany) (represented by: J. Albrecht, lawyer)

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

Re:

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 8 May 2009 (Case R 1429/2008-4), relating to an application for registration as a Community trade mark of the word sign CHROMA

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Deutsche Steinzeug Cremer & Breuer AG to pay the costs.

⁽¹⁾ OJ C 244, 10.10.2009.

Judgment of the General Court of 16 December 2010 — Longevity Health Products v OHIM — Gruppo Lepetit (RESVEROL)

(Case T-363/09) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for Community word mark RESVEROL — Earlier international word mark LESTEROL — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 46/23)

Language of the case: English

Parties

Applicant: Longevity Health Products, Inc. (Nassau, Bahamas) (represented by: J. Korab, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Gruppo Lepetit SpA (Lainate, Italy)

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 9 July 2009 (Case R 1204/2008-2) relating to opposition proceedings between Gruppo Lepetit SpA and Longevity Health Products, Inc.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Longevity Health Products, Inc., to pay the costs.

⁽¹⁾ OJ C 267, 7.11.2009.

Judgment of the General Court of 16 December 2010 — LG Electronics v OHIM (KOMPRESSOR PLUS)

(Case T-497/09) ⁽¹⁾

(Community trade mark — Application for Community word mark KOMPRESSOR PLUS — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2011/C 46/24)

Language of the case: French

Parties

Applicant: LG Electronics, Inc. (Seoul, South Korea) (represented by: J. Blanchard, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 September 2009 (Case R 397/2009-1), relating to an application for registration as a Community trade mark of the word sign KOMPRESSOR PLUS.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders LG Electronics, Inc. to pay the costs.

(¹) OJ C 37, 13.2.2010.

Judgment of the General Court of 16 December 2010 — Baena Grupo v OHIM — Neuman and Galdeano del Sel (Seated figure)

(Case T-513/09) (¹)

(Community design — Invalidity proceedings — Registered Community design representing a seated figure — Earlier Community figurative mark — Ground for invalidity — Individual character — Different overall impression — Article 6 and Article 25(1)(b) of Regulation (EC) No 6/2002)

(2011/C 46/25)

Language of the case: Spanish

Parties

Applicant: José Manuel Baena Grupo, SA (Santa Perpètua de Mogoda, Spain) (represented by: A. Canela Giménez, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Crespo Carrillo and A. Folliard-Monguiral, Agents)

Other parties to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Herbert Neuman (Tarifa, Spain) and Andoni Galdeano del Sel (Spain)

Re:

Action brought against the decision of the Third Board of Appeal of OHIM of 14 October 2009 (Case R 1323/2008-3), relating to invalidity proceedings between Herbert Neuman and Andoni Galdeano del Sel, on the one hand, and José Manuel Baena Grupo, SA, on the other.

Operative part of the judgment

The Court:

1. Annuls the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 14 October 2009 (Case R 1323/2008-3);

2. Orders OHIM to bear its own costs and to pay those incurred by José Manuel Baena Grupo, SA., and orders Herbert Neuman and Andoni Galdeano del Sel to bear their own costs.

(¹) OJ C 51, 27.2.2010.

Order of the General Court of 2 December 2010 — Apostolov v Commission

(Case T-73/10 P) (¹)

(Appeal — Staff cases — Recruitment — Competition — Rejection of application — Delay — Different overall impression — Appeal in part clearly inadmissible and in part clearly unfounded)

(2011/C 46/26)

Language of the case: English

Parties

Appellant: Svetoslav Apostolov (Saarwellingen, Germany) (represented by: D. Schneider-Addae-Mensah, lawyer)

Other party to the proceedings: European Commission (represented by: J. Currall and B. Eggers, acting as Agents)

Re:

Appeal brought against the order of the European Union Civil Service Tribunal (First Chamber) of 15 December 2009 in Case F-8/09 *Apostolov v Commission* ECR-SC I A-1-0000 and II-A-1-0000, seeking, inter alia, to have that order set aside

Operative part of the order

1. The appeal is dismissed.
2. Mr Svetoslav Apostolov shall bear his own costs and shall pay those incurred by the European Commission in the present proceedings.

(¹) OJ C 100, 17.4.2010.

Action brought on 29 November 2010 — Natura Selection v OHIM — Afoi Anezoulaki (natur)

(Case T-549/10)

(2011/C 46/27)

Language in which the application was lodged: English

Parties

Applicant: Natura Selection, SL (Barcelona, Spain) (represented by: E. Sugrañes Coca, lawyer)

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

Other party to the proceedings before the Board of Appeal: Afoi Anezoulaki AE trading as FIERATEX S.A. (Kilkis, Greece)

Form of order sought

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 September 2010 in case R 217/2010-2;
- Annul the decision of the Opposition Division of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 December 2009;
- Reject the Community trade mark application No 6908214 granted by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) for ‘table covers’; and
- Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

Community trade mark concerned: The word mark ‘natur’, for goods in class 24 — Community trade mark application No 6908214

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

Mark or sign cited in opposition: Community trade mark registration No 2016384 of the figurative mark ‘natura selection’, for goods and services in classes 3, 14, 16, 20, 25, 35, 38, 39 and 42; Community trade mark registration No 2704948 of the figurative mark ‘natura’ for goods and services in classes 14, 25 and 35; Community trade mark registration No 3694627 of the figurative mark ‘natura casa’ for goods and services in classes 20, 35 and 39; Community trade mark registration No 4713368 of the figurative mark ‘natura’ for goods and services in classes 14, 20, 25 and 35; International trade mark registration No 642074 of the figurative mark ‘natura selection’ for services in class 39; Spanish trade mark registration No 1811494 of the figurative mark ‘natura selection’ for services in class 39; Spanish national establishment sign No 251725 of the figurative mark ‘natura selection’ for the following activity ‘establishment dedicated to the marketing of gift articles’; Spanish national establishment sign No 252321 of the figurative mark ‘natura selection’ for the following activity ‘establishment dedicated to the marketing of gift articles’; Spanish national establishment sign No 208780 of the word mark ‘NATURA SELECTION, S.L.’ for the following activity ‘establishment dedicated to the marketing of gift products. Located in Barcelona’.

Decision of the Opposition Division: Upheld the opposition for part of the contested goods

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assumed that there was no likelihood of confusion between the trade marks due to a lacking similarity between the trade marks and between the goods.

Action brought on 16 December 2010 — HTTS Hanseatic Trade Trust & Shipping v Council

(Case T-562/10)

(2011/C 46/28)

Language of the case: German

Parties

Applicant: HTTS Hanseatic Trade Trust & Shipping GmbH (Hamburg, Germany) (represented by: J. Kienzle and M. Schlingmann, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- Annul Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 in so far as it concerns the applicant;
- order the Council to pay the costs of the proceedings, in particular those incurred by the applicant.

Pleas in law and main arguments

The applicant raises two pleas in law in support of its action.

1. First plea: infringement of the applicant’s rights of defence.
 - The applicant claims in this regard that the Council infringed its right to effective legal protection and in particular the requirement to state reasons, in that it did not provide sufficient reasons for including it in Annex VIII to the contested regulation.
 - Next, the applicant claims that the Council failed, even though asked expressly, to provide grounds or points of view and the relevant evidence to justify the applicant’s inclusion in Annex VIII to the contested regulation.
 - Finally, the applicant complains in the context of its first plea that the Council infringed its right to be heard, in so far as it failed to provide the applicant with the opportunity laid down in Article 36(3) and (4) of the contested regulation to present observations on its inclusion on the list of sanctioned persons, which would then have required the Council to review the issue.

2. Second plea: infringement of the applicant's fundamental right to respect for property.

- The applicant submits in this regard that its inclusion in Annex VIII to the contested regulation constitutes an unjustified interference with its fundamental right to property, since it is not apparent from the insufficient reasoning provided by the Council why it was included on the list of persons sanctioned under Article 16(2) of the contested regulation.
- Next, the applicant submits that its inclusion in Annex VIII to the contested regulation is based on an obvious erroneous assessment of its situation and of its activities on the part of the Council.
- Finally, the applicant submits in the context of its second plea that its inclusion in Annex VIII to the contested regulation is incompatible with the aims pursued by the regulation and that it constitutes a disproportionate interference with its property rights.

Action brought on 13 December 2010 — Bimbo v OHIM — Panrico (BIMBO DOUGHNUTS)

(Case T-569/10)

(2011/C 46/29)

Language in which the application was lodged: English

Parties

Applicant: Bimbo, SA (Barcelona, Spain) (represented by: J. Carbonell Callicó, lawyer)

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

Other party to the proceedings before the Board of Appeal: Panrico, SL (Barcelona, Spain)

Form of order sought

- Modify the decision of the Fourth Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 7 October 2010 in case R 838/2009-4 and grant the Community trade mark application No 5096847;
- In the alternative, annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 October 2010 in case R 838/2009-4; and
- Order the defendant and the other party to the proceedings to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'BIMBO DOUGHNUTS', for goods in class 30 — Community trade mark application No 5096847

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

Mark or sign cited in opposition: Spanish trade mark registration No 399563 of the word mark 'DONUT' for goods in class 30; Spanish trade mark registration No 643273 of the figurative mark 'donuts' for goods in class 30; Spanish trade mark registration No 1288926 of the word mark 'DOGHNUTS' for goods in class 30; Spanish trade mark registration No 2518530 of the figurative mark 'donuts' for goods in class 30; Portuguese trade mark registration No 316988 of the word mark 'DONUTS' for goods in class 30; International trade mark registration No 355753 of the word mark 'DONUT' for goods in class 30; International trade mark registration No 814272 of the figurative trade mark 'donuts' for goods in class 30

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant considers that the contested decision infringes Articles 75 and 76 of Council Regulation (EC) No 207/2009, as the Board of Appeal disregarded facts and evidences that were submitted in due time by the parties, and that the contested decision infringes Article 8(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal erred in its assessment of likelihood of confusion.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Order of the Civil Service Tribunal of 21 December 2010 — **Lorenzo v European Social and Economic Committee**

(Case F-29/10) ⁽¹⁾

(2011/C 46/30)

Language of the case: French

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

⁽¹⁾ OJ C 179, 3.7.2010, p. 59.

Order of the Civil Service Tribunal of 16 December 2010 — **Adriaansen v European Investment Bank**

(Case F-35/10) ⁽¹⁾

(2011/C 46/31)

Language of the case: French

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

⁽¹⁾ OJ C 209, 31.7.2010, p. 54.

Order of the Civil Service Tribunal of 16 December 2010 — **Merhzaoui v Council of the European Union**

(Case F-52/10) ⁽¹⁾

(2011/C 46/32)

Language of the case: French

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

⁽¹⁾ OJ C 221, 14.8.2010, p. 61.

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