

regulation, initially set for 31 March 2004, was subsequently postponed for one year, thus allowing Community shipyards until 31 March 2005 (the new expiry date of the regulation) to conclude further contracts for building certain types of cargo vessel. In support of those contracts, the regulation provides for aid of up to 6 % of the contract value. The applicant is party to five contracts for the construction of chemical vessels.

In order to finance all of the contracts during the period from 2002 to 2005, Italy notified two financing packages of EUR 10 million each. The Commission authorised the first by decision of 19 May 2004 but refused, by the contested decision, to authorise the second financing package. The Commission maintains that the additional financing constitutes 'new aid' within the meaning of Article 4 of Commission Regulation (EC) No 794/2004 of 21 April 2004 (OJ 2004 L 140, p. 1) in that it represents more than 20 % of the original budget of the scheme. The Commission further argues that the additional financing is incompatible with the common market in that the notification was made after 31 March 2005, the date on which Regulation No 1177/2002 expired.

The applicant submits that it was not possible for the Italian Government to prepare the financing for the contracts by 31 March 2005, since it was not in a position to have knowledge of all the contracts concerned: that being the last day of application of the regulation, the undertakings had the right to conclude contracts up to and on that day.

The applicant accordingly puts forward the following pleas in law in support of its action to contest the decision, in particular:

- infringement of Regulation No 1177/2002 in the light of the specific aims of the legislature in relation to Article 87(3)(e) EC;
- infringement of Article 4(2)(a) of Commission Regulation No 794/2004 in so far as the additional financing of EUR 10 million has been categorised as 'new aid';
- irrelevance of the recommendation of 20 June 2005 of the WTO Dispute Settlement Body in respect of the shipbuilding contracts lawfully concluded under Regulation No 1177/2002;
- failure to state reasons to substantiate the allegation that there is no legal basis for authorising the additional financing;
- breach of the principles of good administration, the right to a fair hearing, the rights of the defence, equal treatment, subsidiarity and proportionality.

Action brought on 24 December 2008 — Kerma v OHIM (BIOPIETRA)

(Case T-586/08)

(2009/C 55/80)

Language in which the application was lodged: Italian

Parties

Applicant: Kerma SpA (Puegnago sul Garda, Italy) (represented by A. Manzoni, lawyer)

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

Form of order sought

- declare that the trade mark BIOPIETRO conforms with Article 4 of the Trade Mark Regulation and is not devoid of any distinctive character within the meaning of Article 7(1)(b) of that regulation;
- order OHIM to pay the costs in the event of its being unsuccessful.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'BIOPIETRA' (application for registration No 5.658.893), for goods in Class 19.

Decision of the Examiner: Rejection of the application for registration.

Decision of the Board of Appeal: Rejection of the appeal.

Pleas in law: Infringement and incorrect application of Article 7(1)(b) of Regulation (EC) No 40/94 on the Community trade mark.

Action brought on 2 January 2009 — Italy v Commission

(Case T-3/09)

(2009/C 55/81)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, avvocato dello Stato)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission Decision of 21 October 2008 on State aid C 20/2008 (ex N 62/2008) which Italy is planning to implement through a modification of scheme N 59/2004 concerning a temporary defensive mechanism to ship-building, registered as number C(2008)6015 final, notified to the Italian Republic on 22 October 2008 by note of 22 October 2008 No SG-Greffe (2008) D/206436.

Pleas in law and main arguments

The decision contested in the present case is the same as that contested in Case T-584/08 *Cantiere Navale De Poli v Commission*.

The pleas in law and main arguments are similar to those put forward in that case.

Action brought on 5 January 2009 — UniCredit v OHIM — Union Investment Privatfonds (UniCredit)

(Case T-4/09)

(2009/C 55/82)

*Language in which the application was lodged: Italian***Parties**

Applicant: UniCredit SpA (Rome, Italy) (represented by: G. Florida, lawyer, and R. Florida, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Union Investment Privatfonds GmbH (Frankfurt am Main, Germany)

Form of order sought

— Annul the decision of the Second Board of Appeal of OHIM delivered on 3 November 2008 in Case R 1449/2006-2, relating to opposition proceedings No B 699.746.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Multi-coloured figurative mark '1 UniCredit' (the number one being 45° inclined to the right and impressed on the spherical logo) (registration application No 2.911.105), for goods and services in Classes 9, 16, 35, 36, 38, 39, 41 and 42.

Proprietor of the mark or sign cited in the opposition proceedings: Union Investment Privatfonds GmbH.

Mark or sign cited in opposition: German word marks 'UniSECTOR', 'UniDynamicFonds' and 'UniGarant', for services in Classes 35 and 36.

Decision of the Opposition Division: Opposition upheld in respect of the services in Class 36.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Misapplication of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark. The applicant argues that the contested decision did not take account of the powers of perception of the public at which the services covered are directed or of the non-existent or minimal distinctiveness of the prefix 'Uni'.

Appeal brought on 15 January 2009 by Luigi Marcuccio against the order of the Civil Service Tribunal delivered on 4 November 2008 in Case F-133/06 Marcuccio v Commission

(Case T-9/09 P)

(2009/C 55/83)

*Language of the case: Italian***Parties**

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

— In every case

(A.1) set aside in its entirety and without exception the order under appeal;

(A.2) declare the action at first instance to be admissible in full.

— As a primary remedy:

(B.1) uphold in their entirety and without exception the appellant's pleas in law set out in the application at first instance;

(B.2) order the respondent to pay the appellant's costs relating to this appeal and to the proceedings at first instance;

— or, in the alternative:

(B.3) refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.