

### Pleas in law and main arguments

The applicant applies under Article 265 TFEU for the revocation of Commission Regulation (EC) No 1629/2005 of 5 October 2005 amending for the 54th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al Qa'ida Network and the Taliban<sup>(1)</sup> as concerns him.

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

First, he submits that the Commission has failed to independently review the basis of the applicant's inclusion in annex 1 at any point, or required any reasons for that inclusion.

Second, he claims that the Commission has failed to provide to the applicant any reasons justifying his inclusion in annex 1 in breach of his right to an effective judicial remedy, the right to defend himself and in breach of his rights to property under the European Convention on Human Rights.

Third, he contends that the Commission's failure to remove the applicant from annex 1 is irrational as there are no reasons available which would satisfy the relevant criteria for inclusion in annex 1 and the United Kingdom Foreign and Commonwealth Office stances that the applicant no longer fulfils the relevant criteria.

<sup>(1)</sup> OJ 2005 L 260 p. 10

### Action brought on 28 July 2010 — ELE.SIA v Commission

(Case T-312/10)

(2010/C 260/29)

*Language of the case: Italian*

#### Parties

*Applicant:* Elettronica e sistemi per automazione (ELE.SIA) SpA (Giudonia Montecelio, Italy) (represented by: S. Bariatti, P. Tomassi and P. Caprile, lawyers)

*Defendant:* European Commission

### Form of order sought

- confirm and declare that ELESIA has properly complied with its contractual obligations;
- confirm and declare that, by failing to pay the amount due in respect of ELESIA's activities and by requesting repayment of the amount already paid, the Commission has breached its contractual obligations;
- accordingly, order the Commission to pay Euro 83 627,68, plus interest, in respect of the costs incurred by ELESIA for the purposes of the Project and which have not yet been reimbursed by the Commission;
- accordingly, annul, revoke — if necessary, through the issuance of corresponding credit notes — or in any event declare unlawful the debit notes by which the Commission has requested repayment from ELESIA, and award damages accordingly;
- in any event, order the Commission to pay the costs of the proceedings.

### Pleas in law and main arguments

The consortium, of which the applicant company in this case is coordinator, entered into a contract with the Commission for the realisation of the project 'I-Way, Intelligent co-operative system in cars for road safety', financed by funds allocated within the context of the 'Sixth Framework Programme for Technological Research and Development'.

As it formed the view that serious irregularities had been committed during the realisation of the project in question, the European Commission decided to rescind the contract.

The applicant maintains, first, that the Commission's conduct is in total breach of the relevant contractual provisions and of the applicable principles of law, such as those of equity, proportionality and good administration. Second, the applicant contends that, after it had correctly carried out all of its contractual obligations for almost the entire 36-month period provided for under the contract, the Commission has no intention of recognising any amount as due, on the basis, moreover, of an audit which is irregular in several respects, and notwithstanding the fact that the applicant cooperated fully in good faith throughout the contractual period and even thereafter.

In support of its contentions, the applicant submits, specifically, that it correctly and consistently carried out its contractual obligations, whereas, by contrast, the Commission breached Articles II.1.11, II.16.1, II.16.2 and II.29 of the General Contractual Conditions, as well as the applicant's rights of defence and the provisions contained in Regulation No 2185/96. <sup>(1)</sup>

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<sup>(1)</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292 of 15.11.1996, p. 2).

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**Action brought on 26 July 2010 — Three-N-Products Private/OHMI — Shah (AYUURI NATURAL)**

**(Case T-313/10)**

(2010/C 260/30)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Three-N-Products Private Ltd (New Delhi, India) (represented by: C. Jäger, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Mr S Shah, Mr A Shah, Mr M Shah — A Partnership t/a FUDCO (Wembley, United Kingdom)

**Form of order sought**

— Annul the decision of the Fourth Board of Appeal of the Office For Harmonisation in the Internal Market (Trade Marks and Designs) of 1 June 2010 in case R 1005/2009-4;

— Order the defendant to confirm the decision of the Opposition Division of the Office For Harmonisation in the Internal Market (Trade Marks and Designs) of 2 July 2009 and to reject the community trade mark application No 5805387 in its entirety;

— Order the defendant to bear the costs of the proceedings;

— Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal and the Opposition Division, should it become an intervening party in this case.

**Pleas in law and main arguments**

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

*Community trade mark concerned:* The word mark 'AYUURI NATURAL', for goods in classes 3 and 5

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

*Mark or sign cited:* Community trade mark registration No 2996098 of the figurative mark 'Ayur', for, amongst others, the goods in classes 3 and 5; Community trade mark registration No 5429469 of the word mark 'AYUR', for, amongst others, goods in classes 3 and 5

*Decision of the Opposition Division:* Upheld the opposition and rejected the application in its entirety

*Decision of the Board of Appeal:* Upheld the appeal, annulled the contested decision and rejected the opposition

*Pleas in law:* The applicant advances two pleas in law in support of its application.

On the basis of its first plea, the applicant claims that the contested decision infringes Articles 7 and 8 of Council Regulation (EC) No 207/2009, as the Board of Appeal erroneously stated that there is no likelihood of confusion and that the earlier trademarks have a suggestive connotation in relation to the goods at hand which reduces the distinctive character of the earlier marks.

By its second plea, the applicant considers that the contested decision infringes Article 65(2) of Council Regulation (EC) No 207/2009, as the Board of Appeal misused its power by ruling the contested decision since it lacks objectivity and legal basis.