

6. Sixth plea in law, alleging that the Commission has failed to provide a sufficient statement of reasons, in that the reasons:

- are generally inconsistent and self-contradictory on a number of points;
- fail to provide a sufficient explanation as to how liberalisation of the gaming market is a legitimate purpose to pursue through approvals on the basis of Article 107(3)(c) TFEU;
- do not give a satisfactory explanation of the Commission's interpretation of Article 107(3)(c) TFEU;
- do not document the need for State aid or give a sufficient account of taxation in other Member States;
- lack clarity as to the objectives of the Danish Gaming Duties Act;
- fail to address Danish legislation covering other forms of gaming;
- contain no examination or explanation of the effects of the aid on land-based gaming operations.

**Action brought on 5 December 2011 — Meyr-Melnhof Karton v OHIM — Stora Enso (SILVAWHITE)**

(Case T-617/11)

(2012/C 32/73)

*Language in which the application was lodged: English*

#### Parties

*Applicant:* Meyr-Melnhof Karton AG (Vienna, Austria) (represented by: P. Baronikians and N. Wittich, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Stora Enso Oyj (Helsinki, Finland)

#### 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 21 September 2011 in case R 2139/2010-2;
- Reject the opposition against the Community trade mark application No 8197469; and

- Order that the defendant pays the applicant's costs incurred before OHIM and the General Court.

#### Pleas in law and main arguments

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'SILVAWHITE', for goods in class 16 — Community trade mark application No 8197469

*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:* Finnish trade mark registration No 231953 of the word 'SILVAPRESS', for goods in class 16; International trade mark registration No 872793 of the word 'SILVAPRESS', for goods in class 16

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

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Council Regulation No 207/2009, as the Board of Appeal wrongly ruled that likelihood of confusion exists between the earlier mark and the Community trade mark application.

**Appeal brought on 2 December 2011 by Francesca Cervelli against the order of the Civil Service Tribunal of 12 September 2011 in Case F-98/10, Cervelli v Commission**

(Case T-622/11 P)

(2012/C 32/74)

*Language of the case: French*

#### Parties

*Appellant:* Francesca Cervelli (Brussels, Belgium) (represented by J. García-Gallardo Gil-Fournier, lawyer)

*Other party to the proceedings:* European Commission

#### Form of order sought by the appellant

- Admit the appeal and declare it admissible;
- Regard the appeal as having been brought in the name and for the benefit of Ms Francesca Cervelli by her legal representatives;
- Declare the order delivered on 12 September 2011 by the Civil Service Tribunal void in its entirety;
- Order the matter to be referred back to the Civil Service Tribunal for examination of the substance.

#### Pleas in law and main arguments

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

First plea in law, alleging a manifest error in the assessment of the facts, since the CST took the view that the appellant

could not rely on the emergence of a new fact consisting in the judgment delivered by the General Court on 19 June 2007 in Case T-473/04 *Asturias Cuerno v Commission*, not published in the ECR. The appellant submits that that judgment constitutes a new fact, since the judgment concerns the same situation as that of the appellant and since the main part of the analysis in that judgment concerns an objective point and not facts particular to the case.

Second plea in law, alleging a manifest error in law, since the CST gave absolute priority to the discretion based on the principle of the autonomy of the Appointing Authority over the principle of unity of the civil service.

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**Action brought on 30 November 2011 — PICO Food v OHIM — Sobieraj (MILANÓWEK CREAM FUDGE)**

(Case T-623/11)

(2012/C 32/75)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* PICO Food GmbH (Tamm, Germany) (represented by: M. Douglas, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Bogumit Sobieraj (Milanówek, Poland)

**Form of order sought**

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 September 2011 in case R 553/2010-1;

— Order the defendant to bear 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 figurative mark 'MILANÓWEK CREAM FUDGE', for goods in class 30 — Community trade mark application No 6342455

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

*Mark or sign cited in opposition:* German trade mark registration No 30522224 of the figurative mark representing a cow, for goods in class 30; German trade mark registration No 30523439 of the figurative mark 'Original Sahne Muh-Muhs HANDGESCHNITTEN HANDGEWICKELT', for goods in class 30; German trade mark registration No 30702751 of the

figurative mark 'Original Sahne Muh-Muhs HANDGESCHNITTEN HANDGEWICKELT', for goods in class 30; German trade mark registration No 30702748 of the figurative mark 'Original Sahne Muh-Muhs HANDGESCHNITTEN HANDGEWICKELT', for goods in class 30; German trade mark registration No 30700574 of the figurative mark 'SAHNE TOFFEE LUXURY CREAM FUDGE', for goods in class 30

*Decision of the Opposition Division:* Rejected the opposition in its entirety

*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 misinterpreted the general principles laid down by the European Courts and denied the existence of likelihood of confusion between the opposition trademarks and the contested application. Infringement of Article 76(1) of Council Regulation No 207/2009, as the Board of Appeal based the decision on facts which have not been forwarded by the parties to the proceedings.

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**Action brought on 30 November 2011 — Yueqing Onesto Electric v OHIM — Ensto (ONESTO)**

(Case T-624/11)

(2012/C 32/76)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Yueqing Onesto Electric Co. Ltd (Zhejiang, China) (represented by: B. Piepenbrink, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Ensto Oy (Porvoo, Finland)

**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 20 September 2011 in case R 2535/2010-2; and

— Order that the defendant to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark 'ONESTO', for goods in class 9 — Community trade mark application No W00909305

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