

Pleas in law and main arguments

The applicant in these proceedings has entered into a number of contracts with the Commission in relation to R&D, all regulated on the basis of Commission Decision C(2003) 3834 of 23 October 2003, which provides for a core contract of the type FP 5 or FP 6 and for the general conditions FP 5 and FP 6.

In relation to those contracts, and on the basis of the results of an investigation carried out by OLAF and an audit performed by the Commission, the Commission adopted a decision revoking subsidies.

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

1. First plea in law, alleging an infringement of the rights of the defence, as a result of the means of execution of the said audit.
2. Second plea in law, alleging an infringement of the principle of legal certainty, by denying the applicant the applicable legal framework throughout the procedure.
3. Third plea in law, alleging a failure on the part of the Commission to comply with its duty to state reasons.
4. Fourth plea in law, alleging an infringement of the principle of the presumption of innocence, as a result of the tone adopted by DG INFSO in its audit report.
5. Fifth plea in law, alleging a failure to have regard for the right to good administration, as a result of failure on the part of the auditors to comply with their duty of impartiality and equality.
6. Sixth plea in law, infringement of the principle of legitimate expectations, particularly with regard to the lack of accreditation of the external auditors and the origin of the audit process itself.
7. Seventh plea in law, infringement of the principle of proportionality.
8. Eighth plea in law, alleging an infringement of the right to privacy.

Action brought on 19 March 2012 — FunFactory v OHIM (three-dimensional mark in the shape of a vibrator)

(Case T-137/12)

(2012/C 157/17)

Language of the case: German

Parties

Applicant: FunFactory GmbH (Bremen, Germany) (represented by K.-D. Franzen, lawyer)

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

Form of order sought

The applicant claims that the Court should:

- annul the contested decision (R 1436/2011-4) of the Fourth Board of Appeal of OHIM of 19 January 2012;
- order OHIM to pay the costs of the proceedings, including those incurred in the proceedings before the Board of Appeal.

Pleas in law and main arguments

Community trade mark concerned: three-dimensional mark in the shape of a vibrator (application No 9 390 691) for goods in Class 10

Decision of the Examiner: refusal to register

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: incorrect interpretation and application of Article 7(1)(b) of Regulation No 207/2009, since the mark applied for is distinctive and is not descriptive of the goods in respect of which registration is sought. Infringement of the duty to state reasons laid down in Article 73(1) of Regulation No 207/2009 and of the right to be heard.

Action brought on 26 March 2012 — Geipel v OHIM — Reeh (BEST BODY NUTRITION)

(Case T-138/12)

(2012/C 157/18)

Language in which the application was lodged: German

Parties

Applicant: Yves Geipel (Auerbach, Germany) (represented by: J. Sachs, lawyer)

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

Other party to the proceedings before the Board of Appeal: Jörg Reeh (Buxtehude, Germany)

Form of order sought

- Annul the contested decision of the First Board of Appeal of OHIM of 12 January 2012 and reject the opposition of 24 July 2009;

— Order OHIM to pay the costs of the proceedings, including the costs incurred in the appeal proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Yves Geipel

Community trade mark concerned: Figurative mark 'BEST BODY NUTRITION' (international registration No W 982 101, naming the European Union) for goods in classes 25, 28, 29, 30 and 32.

Proprietor of the mark or sign cited in the opposition proceedings: Jörg Reeh.

Mark or sign cited in opposition: Community trade mark No 4 020 161 'BEST4BODY' for goods in class 25.

Decision of the Opposition Division: Opposition allowed.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: There is no likelihood of confusion between the marks at issue.

Action brought on 11 April 2012 — Ternavsky v Council

(Case T-163/12)

(2012/C 157/19)

Language of the case: French

Parties

Applicant: Anatoly Ternavsky (Moscow, Russia) (represented by: C. Rapin and E. Van den Haute, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible;

— annul point 2 of Annex II to Council Implementing Decision 2012/171/CFSP of 23 March 2012 implementing Decision 2010/639/CFSP concerning restrictive measures against Belarus, and point 2 of Annex II to Council Implementing Regulation (EU) No 265/2012 of 23 March 2012 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus;

— order the Council to pay the costs in their entirety;

— order the Council to pay the costs under Article 87(6) in conjunction with Article 90(a) of the Rules of Procedure of the General Court if the Court decides that there is no need to adjudicate.

Pleas in law and main arguments

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

1. First plea in law, alleging a manifestly incorrect establishment of the facts as regards the reasons which resulted in the inclusion of the applicant's name in the list of persons subject to sanctions, mentioned by the Council's acts.
 2. Second plea in law, alleging that there is an insufficient statement of reasons for the contested acts inasmuch as the reasons stated are of no help in understanding the necessity for that inclusion.
 3. Third plea in law, alleging infringement of Decision 2010/639/CFSP and of Regulation (EC) No 765/2006, as amended, and of the principle of the prohibition of discrimination, first, in so far as the scope of those acts was extended to a businessman without establishing the conduct in support of the regime of President Lukashenko which may be attributed to him and, secondly, in so far as other businessmen, whom the Council also regards as close to the Belarusian authorities, have not, unlike the applicant, been included in the European sanctions lists.
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