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COURT OF JUSTICE OF THE EUROPEAN UNION

(2013/C 233/01)

Last publication of the Court of Justice of the European Union in the *Official Journal of the European Union*

OJ C 226, 3.8.2013

Past publications

OJ C 215, 27.7.2013

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OJ C 164, 8.6.2013

These texts are available on:

EUR-Lex: http://eur-lex.europa.eu

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Action brought on 21 May 2013 — European Commission v Portuguese Republic

(Case C-277/13)

(2013/C 233/02)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Guerra e Andrade and F.W. Bulst, acting as Agents)

Defendant: Portuguese Republic

Form of order sought

The Commission claims that the Court of Justice should:

— declare that, by failing to take the necessary measures for the organisation of a selection procedure for suppliers authorised to provide groundhandling, ramp handling and freight and mail handling services at Lisbon, Porto and Faro airports, in accordance with Article 11 of Directive 96/67/EC, [1] the Portuguese State has failed to comply with Article 11 of Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports;

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

Having failed to open up its groundhandling market to suppliers, the Portuguese State has acted contrary to European Union law.

Having limited the number of groundhandling service suppliers authorised to provide groundhandling, ramp handling and freight and mail handling services, the Portuguese State was required to organise a selection procedure in accordance with Article 11 of Directive 96/67/EC. The procedure should also have been organised following consultation with the Airport Users' Committee. Moreover, pursuant to Article 11(1)(d) of Directive 96/67/EC, suppliers are to be selected for a maximum period of seven years.

[1] OJ 1996 L 272, p. 36.

Appeal brought on 5 June 2013 by Società Italiana Calzature SpA against the judgment of the General Court (Third Chamber) delivered on 9 April 2013 in Case T-336/11 Società Italiana Calzature SpA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-308/13 P)

(2013/C 233/03)

Language of the case: Italian

Parties

Appellant: Società Italiana Calzature SpA (represented by: A. Rapisardi and C. Ginevra, avvocati)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), VICINI SpA

Form of order sought

— Set aside judgment No 564397 delivered by the General Court of the European Union in Cases T-336/11 on 9 April 2013 and notified on that date and grant the claims made by Società Italiana Calzature SpA ('SIC') in the proceedings at first instance by annulling the decision of the Second Board of Appeal of OHIM of 8 April 2011 in Case R 0634/20 10-2 and, in accordance with the decision of the Opposition Division of 5 March 2010 on opposition No B 1 350 711, declare that Community trade mark VICINI No 6513386 is to be refused registration on the ground of lack of novelty, as it is similar to such a degree that it may be confused with the earlier word sign 'ZANOTTI', which is registered in the European Union under No 244 277 and in Italy under No 452 869, SIC being the proprietor of both registrations;

— order OHIM to pay all the costs of both sets of proceedings;

— order VICINI SpA to reimburse SIC in respect of all the costs relating to the proceedings before the Opposition Division and the Board of Appeal.

Pleas in law and main arguments

The decision of the General Court is vitiated by inadequate and contradictory reasoning. The fact that the graphic element is visually dominant when compared with the word element of the mark applied for and that the words 'Giuseppe' and 'Design' have been added to the term 'ZANOTTI' are not sufficient to rule out the possibility of a likelihood of confusion between the marks at issue, in view of the intrinsic qualities of the elements in question, in particular their lack of distinctive character.

The General Court erred in finding that the word 'ZANOTTI', which is the word element of the mark applied for, does not have an independent distinctive role, thus also ruling out in this respect a likelihood of confusion between the marks at issue.

Appeal brought on 5 June 2013 by Società Italiana Calzature SpA against the judgment of the General Court (Third Chamber) delivered on 9 April 2013 in Case T-337/11 Società Italiana Calzature SpA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-309/13 P)

(2013/C 233/04)

Language of the case: Italian

Parties

Appellant: Società Italiana Calzature SpA (represented by: A. Rapisardi and C. Ginevra, avvocati)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), VICINI SpA

Form of order sought

— Set aside judgment No 564400 delivered by the General Court of the European Union in Cases T-337/11 on 9 April 2013 and notified on that date and grant the claims made by Società Italiana Calzature SpA ('SIC') in the proceedings at first instance by annulling the decision of the Second Board of Appeal of OHIM of 8 April 2011 in Case R 0918/2010-2 and declare that VICINI's Community trade mark No 4337.754 is to be refused registration on the ground of lack of novelty, as it is similar to such a degree that it may be confused with the earlier word sign 'ZANOTTI', which was registered in the European Union under No 244 277 and is owned by SIC;

— order OHIM to pay all the costs of both sets of proceedings;

— order VICINI SpA to reimburse SIC in respect of all the costs relating to the proceedings before the Opposition Division and the Board of Appeal.

Pleas in law and main arguments

The decision of the General Court is vitiated by inadequate and contradictory reasoning. The fact that the graphic element is visually dominant when compared with the word element of the mark applied for and that the words 'By' and 'Giuseppe' have been added to the term 'ZANOTTI' are not sufficient to rule out the possibility of a likelihood of confusion between the marks at issue, in view of the intrinsic qualities of the elements in question, in particular their lack of distinctive character.

The General Court also erred in finding that the word 'ZANOTTI', which is the word element of the mark applied for, does not have an independent distinctive role, thus also ruling out in this respect a likelihood of confusion between the marks at issue.

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 7 June 2013 — Užsienio reikalų ministerija v Vladimir Peftiev, BelTechExport ZAO, Sport-pari ZAO, BT Telecommunications PUE

(Case C-314/13)

(2013/C 233/05)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania)

Parties to the main proceedings

Appellant: Užsienio reikalų ministerija (Ministry of Foreign Affairs)

Respondents: Vladimir Peftiev, BelTechExport ZAO, Sport-pari ZAO, BT Telecommunications PUE

Other party to the proceedingss: Finansinių nusikaltimų tyrimų tarnyba prie Vidaus reikalų ministerijos (Financial Crime Investigation Service attached to the Ministry of the Interior)

Questions referred

1. Must Article 3(1)(b) of Council Regulation (EC) No 765/2006 [1] of 18 May 2006 be interpreted as meaning that the authority which is responsible for application of the exemption set out in Article 3(1)(b) of that regulation enjoys an absolute discretion when taking a decision on whether to grant that exemption?

2. If the answer to the first question is in the negative, by which criteria should that authority be guided, and by which criteria is it bound, when taking a decision on whether to grant the exemption set out in Article 3(1)(b) of Council Regulation (EC) No 765/2006 of 18 May 2006?

3. Must Article 3(1)(b) of Council Regulation (EC) No 765/2006 of 18 May 2006 be interpreted as meaning that the authority which is responsible for granting the aforementioned exemption is entitled or obliged, when carrying out the assessment as to whether to grant the exemption sought, to have regard for, inter alia, the fact that the applicants submitting the request are seeking to give effect to their fundamental rights (in this case, the right to a judicial remedy), although it must also ensure that if, in the specific case, the exemption is granted, the objective of the sanction provided for will not be negated and that the exemption will not be misused (for example, if the amount of money earmarked for securing a legal remedy would be manifestly disproportionate in relation to the scale of the legal services provided)?

4. Must Article 3(1)(b) of Council Regulation (EC) No 765/2006 of 18 May 2006 be interpreted as meaning that one of the bases capable of providing justification for not granting the exemption set out in that provision may be the illegal nature of the acquisition of the funds in respect of the use of which that exemption is to be implemented?

(1) Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (OJ 2006 L 134, p. 1).

Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 11 June 2013 — X

(Case C-318/13)

(2013/C 233/06)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: X

Questions referred

1. Is Article 4(1) of Directive 79/7/EEC [1] (Directive on the progressive implementation of the principle of equal treatment of men and women in matters of social security) to be interpreted in such a way that it precludes national legislation on the basis of which the different life expectancies of men and women are used as an actuarial calculation criterion for a statutory social benefit payable due to an accident, when, by using this criterion, the lump sum benefit paid to a man is smaller than that paid to a woman of the same age and in a similar situation in other respects?

2. If the answer to the first question is affirmative, does the case involve a sufficiently serious breach of EU law, this being a condition for Member State liability, particularly when account is taken of the following:

   — in its case-law, the CJEU has not taken a specific position on the question of whether sex-based actuarial factors may be taken into account in the determination of statutory social security benefits falling within the scope of application of Directive 79/7/EEC;

   — in its judgment issued in case C-236/09 *Test-Achats* the CJEU has stated that Article 5(2) of Directive 2004/113/EC [2] (Directive implementing the principle of equal treatment between men and women in the access to and supply of goods and services), which allows such factors to be taken into consideration, is invalid but has stipulated a transitional period prior to the provision becoming invalid; and

   — in Directives 2004/113/EC and 2006/54/EC [3] (Directive on the implementation of the principle of equal opportunity and equal treatment of men and women in matters of employment and occupation) the EU's legislature has allowed, on certain conditions, sex-based actuarial factors to be taken into account in the calculation of benefits referred to in these Directives, and on the basis of this the national legislature has assumed that these factors can also be considered in the area of statutory social security referred to in this case?

(1) OJ 1979 L 6, p. 24.
(2) OJ 2004 L 373, p. 37.
(3) OJ L 204, p. 23.

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 20 June 2013 — Marjan Noorzia

(Case C-338/13)

(2013/C 233/07)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Marjan Noorzia

Defendant: Bundesministerin für Inneres

Question referred

Is Article 4(5) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification [1] to be interpreted as precluding a provision under which spouses and registered partners must already have reached the age of 21 years at the time at which the application is submitted in order to be considered to be entitled to join other family members?

[1] OJ 2003 L 251, p. 12.

Request for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium) lodged on 21 June 2013 — bpost SA v Institut belge des services postaux et des télécommunications (IBPT)

(Case C-340/13)

(2013/C 233/08)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: bpost SA

Defendant: Institut belge des services postaux et des télécommunications (IBPT)

Questions referred

1. Is the fifth indent of Article 12 of Directive 1997/67/EC, [1] as amended by Directives 2002/39/EC [2] and 2008/6/EC [3], to be interpreted as imposing an obligation of non-discrimination, particularly in relations between the universal service provider and intermediaries, with regard to the operational discounts granted by that provider, the pure quantity discounts remaining subject to the application of the fourth indent of Article 12?

2. If the reply to the first question is in the affirmative, does the pure quantity discount accord with the obligation of non-discrimination laid down under the fourth indent of Article 12 where the differentiation in price which it creates is based on an objective factor having regard to the relevant geographical and services market and it does not create an effect of exclusion or of inducing loyalty?

3. If the reply to the first question is in the negative, does the quantity discount granted to the intermediary breach the principle of non-discrimination under the fifth indent of Article 12 where the its size does not equal the discount granted to a sender who posts an equivalent number of items, but equals all the discounts granted to all the senders on the basis of the number of items of each sender whose postal items are consolidated?

[1] Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ 1998 L 15, p. 14).

[2] Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services (OJ 2002 L 176, p. 21).

[3] Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services (OJ 2008 L 52, p. 3)

GENERAL COURT

Judgment of the General Court of of 3 July 2013 — MB System v Commission

(Case T-209/11) [1]

(State aid — Aid granted by Germany to the Biria group in the form of the provision of a silent participation by a public undertaking — Decision declaring the aid incompatible with the internal market — Decision taken following the annulment by the General Court of the earlier decision concerning the same procedure — Advantage — Private investor test — Concept of firm in difficulty — Calculation of the aid element — Manifest error of assessment)

(2013/C 233/09)

Language of the case: German

Parties

Applicant: MB System GmbH & Co. KG (Nordhausen, Germany) (represented by: G. Brüggen and C. Geiert, lawyers)

Defendant: European Commission (represented by: F. Erlbacher and T. Maxian Rusche, Agents)

Re:

Application for annulment of Commission Decision 2011/471/EU of 14 December 2010 on State aid C 38/05 (ex NN 52/04) granted by Germany to the Biria group (OJ 2011 L 195, p. 55).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders MB System GmbH & Co. KG to pay the costs, including those relating to the interim proceedings.*

---

[1] OJ C 186, 25.6.2011.

Judgment of the General Court of 3 July 2013 — GRE v OHIM — Villiger Söhne (LIBERTE brunes)

(Case T-78/12) [1]

(Community trade mark — Opposition proceedings — Application for the Community figurative mark LIBERTE brunes — Earlier Community word and figurative marks La LIBERTAD — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 233/10)

Language of the case: German

Parties

Applicant GRE Grand River Enterprises Deutschland GmbH (Kloster Lehnin, Germany) (represented by: I. Memmler and S. Schulz, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider and D. Walicka, Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Villiger Söhne GmbH (Waldshut-Tiengen, Germany) (represented by: H. McKenzie and B. Pikolin, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 1 December 2011 (Case R 2109/2010-1), relating to opposition proceedings between Villiger Söhne GmbH and GRE Grand River Enterprises Deutschland GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders GRE Grand River Enterprises Deutschland GmbH to pay the costs.*

---

[1] OJ C 109, 14.4.2012.

Judgment of the General Court of 3 July 2013 — Cytochroma Development v OHIM — Teva Pharmaceutical Industries (ALPHAREN)

(Case T-106/12) [1]

(Community trade mark — Opposition proceedings — Application for the Community word mark ALPHAREN — Earlier national word marks ALPHA D3 — Relative ground for refusal — Compliance by OHIM with a judgment annulling a decision of its Boards of Appeal — Article 65(6) of Regulation (EC) No 207/2009 — Composition of the Boards of Appeal — Article 1(d) of Regulation (EC) No 216/96)

(2013/C 233/11)

Language of the case: English

Parties

Applicant: Cytochroma Development, Inc. (Saint Michael, Barbados) (represented by: S. Malynicz, Barrister, and A. Smith, Solicitor)

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: Teva Pharmaceutical Industries Ltd (Jerusalem, Israel)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 2 December 2011 (Case R 1235/2011-1), relating to opposition proceedings between Teva Pharmaceutical Industries Ltd and Cytochroma Development, Inc.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 2 December 2011 (Case R 1235/2011-1);*

2. *Orders OHIM to pay the costs.*

[1] OJ C 138, 12.5.2012.

Judgment of the General Court of 3 July 2013 — GRE v OHIM — Villiger Söhne (LIBERTE american blend against a blue background)

(Case T-205/12) [1]

(Community trade mark — Opposition proceedings — Application for the Community figurative mark LIBERTE american blend — Earlier Community figurative mark La LIBERTAD — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 233/12)

Language of the case: German

Parties

Applicant: GRE Grand River Enterprises Deutschland GmbH (Kloster Lehnin, Germany) (represented by: I. Memmler and S. Schulz, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Villiger Söhne GmbH (Waldshut-Tiengen, Germany) (represented by: B. Pikolin and H. McKenzie, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 1 March 2012 (Case R 387/2011-1), relating to opposition proceedings between Villiger Söhne GmbH and GRE Grand River Enterprises Deutschland GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders GRE Grand River Enterprises Deutschland GmbH to pay the costs.*

[1] OJ C 209, 14.7.2012.

Judgment of the General Court of 3 July 2013 — GRE v OHIM — Villiger Söhne (LIBERTE american blend against a red background)

(Case T-206/12) [1]

(Community trade mark — Opposition proceedings — Application for the Community figurative mark LIBERTE american blend — Earlier Community word mark La LIBERTAD — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 233/13)

Language of the case: German

Parties

Applicant: GRE Grand River Enterprises Deutschland GmbH (Kloster Lehnin, Germany) (represented by: I. Memmler and S. Schulz, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Villiger Söhne GmbH (Waldshut-Tiengen, Germany) (represented by: B. Pikolin and H. McKenzie, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 1 March 2012 (Case R 411/2011-1), relating to opposition proceedings between Villiger Söhne GmbH and GRE Grand River Enterprises Deutschland GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders GRE Grand River Enterprises Deutschland GmbH to pay the costs.*

[1] OJ C 209, 14.7.2012.

Judgment of the General Court of 3 July 2013 — Airbus v OHIM (NEO)

(Case T-236/12) [1]

(Community trade mark — Application for the Community word mark NEO — Absolute grounds for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 — Extent of the examination to be carried out by the Board of Appeal — Examination as to the merits conditional on the admissibility of the action — Articles 59 and 64(1) of Regulation (EC) No 207/2009 — Obligation to state reasons — Article 75 of Regulation (EC) No 207/2009 — Examination of the facts by the Office of its own motion — Article 76 of Regulation (EC) No 207/2009)

(2013/C 233/14)

Language of the case: English

Parties

Applicant: Airbus SAS (France) (represented by: G. Würtenberger and R. Kunze, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 February 2012 (Case R 1387/2011-1), concerning an application for registration of the word sign NEO as a Community trade mark

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 23 February 2012 (Case R 1387/2011-1) as regards the services in Class 39 of the Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks of 15 June 1957, as revised and amended;*

2. *Dismisses the action as to the remainder;*

3. *Orders each party to bear its own costs.*

[1] OJ C 243, 11.8.2012.

Judgment of the General Court of 3 July 2013 — Warsteiner Brauerei Haus Cramer v OHIM

(Case T-243/12) [1]

(Community trade mark — Opposition proceedings — Application for the Community figurative mark ALOHA 100 % NATURAL — Earlier national word mark ALOA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 233/15)

Language of the case: German

Parties

Applicant: Warsteiner Brauerei Haus Cramer KG (formerly International Brands Germany GmbH & Co. KG) (Warstein, Germany) (represented by: B. Hein and M.-H. Hoffman, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, then by A. Schifko, Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Stuffer SpA (Bolzano, Italy) (represented by: F. Jacobacci, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 14 March 2012 (Case R 1058/2011-1), relating to opposition proceedings between Stuffer SpA and Warsteiner Brauerei Haus Cramer KG, formerly International Brands Germany GmbH & Co. KG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Warsteiner Brauerei Haus Cramer KG to pay the costs.*

[1] OJ C 217, 21.7.2012.

Judgment of the General Court of 4 July 2013 — Laboratoires CTRS v Commission

(Case T-301/12) [1]

(Medicinal products for human use — Application for authorisation to market the medicinal product Orphacol — Commission decision refusing to grant authorisation — Regulation (EC) No 726/2004 — Directive 2001/83/EC — Well-established medicinal use — Exceptional circumstances)

(2013/C 233/16)

Language of the case: English

Parties

Applicant: Laboratoires CTRS (Boulogne-Billancourt, France) (represented by: K. Bacon, Barrister, M. Utges Manley and M. Barnden, Solicitors)

Defendant: European Commission (represented by: E. White, M. Šimerdová and L. Banciella, acting as Agents)

Interveners in support of the applicant: Czech Republic (represented by: M. Smolek and D. Hadroušek, acting as Agents); Kingdom of Denmark (represented by: V. Pasternak Jørgensen and C. Thorning, acting as Agents); French Republic (represented by: D. Colas, F. Gloaguen and S. Menez, acting as Agents); Republic of Austria (represented by: C. Pesendorfer and A. Posch, acting as Agents); United Kingdom of Great Britain and Northern Ireland (represented: initially by S. Behzadi-Spencer, acting as Agent, and subsequently by C. Murrel, and finally by L. Christie, acting as Agents, and by J. Holmes, Barrister)

Intervener in support of the defendant: Republic of Poland (represented: initially by B. Majczyna and M. Szpunar, and subsequently by B. Majczyna, acting as Agents)

Re:

Application for annulment of Commission Implementing Decision C(2012) 3306 final of 25 May 2012 refusing a marketing authorisation under Regulation (EC) No 726/2004 of the European Parliament and of the Council for 'Orphacol — Cholic acid', an orphan medicinal product for human use.

Operative part of the judgment

The Court:

1. *Annuls Commission Implementing Decision C(2012) 3306 final of 25 May 2012 refusing a marketing authorisation under Regulation (EC) No 726/2004 of the European Parliament and of the Council for 'Orphacol — Cholic acid', an orphan medicinal product for human use;*

2. *Orders the European Commission to bear its own costs and those incurred by Laboratoires CTRS;*

3. *Orders the Czech Republic, the Kingdom of Denmark, the French Republic, the Republic of Austria, the Republic of Poland and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

[1] OJ C 250, 18.8.2012.

Order of the General Court of 2 July 2013 — Mederer v OHIM — Katjes Fassin (SOCCER GUMS)

(Case T-258/12) [1]

(Community trade mark — Opposition — Withdrawal of the opposition — No need to adjudicate)

(2013/C 233/17)

Language of the case: German

Parties

Applicant: Mederer GmbH (Fürth, Germany) (represented by: O. Ruhl and C. Sachs, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Marten and R. Pethke, Agents)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Katjes Fassin GmbH & Co. KG (Emmerich am Rhein, Germany) (represented by: T. Schmitz and C. Osterrieth, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 10 April 2012 (Case R 225/2011-4) relating to opposition proceedings between Mederer GmbH and Katjes Fassin GmbH & Co. KG.

Operative part of the order

1. *There is no need to adjudicate on the action.*

2. *The applicant and the intervener shall bear their own costs and shall each pay half of the costs incurred by the defendant.*

[1] OJ C 217, 21.7.2012.

Appeal brought on 14 February 2013 by Z against the judgment of the Civil Service Tribunal of 5 December 2012 in Joined Cases F-88/09 and F-48/10, Z v Court of Justice

(Case T-88/13 P)

(2013/C 233/18)

Language of the case: French

Parties

Appellant: Z (Luxembourg, Luxembourg) (represented by F. Rollinger, lawyer)

Other party to the proceedings: Court of Justice of the European Union

Form of order sought by the appellant

The appellant claims that the Court should:

- declare the appeal admissible;
- declare the appeal well-founded;
- accordingly set aside the judgment of the Civil Service Tribunal of the European Union (Third Chamber) of 5 December 2012 in Joined Cases F-88/09 and F-48/10 Z v *Court of Justice of the European Union*;
- rule in accordance with the applications initiating proceedings in Cases F-88/09 and F-48/10;
- order the opposing party to pay the costs of both instances;
- reserve to the appellant all other rights, entitlements, pleas and actions.

Pleas in law and main arguments

In support of the appeal, the appellant relies on eleven grounds of appeal.

1. First ground of appeal, alleging a lack of impartiality on the part of the Third Chamber of the Civil Service Tribunal.

2. Second ground of appeal, alleging the absence of an effective remedy, as the Civil Service Tribunal is restricting the appellant's action against the institutions.

3. Third ground of appeal, alleging the lack of competence on the part of Judge Rofes i Pujol to rule on the application for the recusal of Judge Van Raepenbusch.

4. Fourth ground of appeal, alleging infringement of the right to a fair hearing since the appellant did not have the possibility of appealing against the Civil Service Tribunal's decision to dismiss the application for the recusal of a judge.

5. Fifth ground of appeal, alleging infringement of the right to proof and of the obligation to establish the substantive truth of the reasons of the Appointing Authority which gave rise to the reassignment decision and the disciplinary decision.

6. Sixth ground of appeal, alleging an error of law inasmuch as the Civil Service Tribunal held that the reassignment decision had been adopted solely in the interest of the service within the meaning of Article 7(1) of the Staff Regulations of Officials of the European Union.

7. Seventh ground of appeal, alleging an error of law inasmuch as the Civil Service Tribunal held that the posts are equivalent for the purposes of Article 7 of those Staff Regulations.

8. Eighth ground of appeal, alleging infringement of the rights of the defence and of the right to a fair hearing.

9. Ninth ground of appeal, alleging an error of law inasmuch as the Civil Service Tribunal declared inadmissible the claim for compensation of the damage arising from the publication of the reassignment decision within the institution, even though the appellant was not required to bring pre-litigation administrative proceedings in order to assert her claim for compensation.

10. Tenth ground of appeal, alleging an error of law inasmuch as the Civil Service Tribunal held that the Complaints Committee was competent to take a decision on the appellant's complaint.

11. Eleventh ground of appeal, alleging an error of law as the Civil Service Tribunal did not hold that the respondent had infringed Articles 1 to 3 of Annex IX to the Staff Regulations, the rights of the defence and the rule that the parties should be heard during the disciplinary proceedings.

Appeal brought on 24 May 2013 by AK against the judgment of the Civil Service Tribunal of 13 March 2013 in Case F-91/10, AK v Commission

(Case T-288/13 P)

(2013/C 233/19)

Language of the case: French

Parties

Appellant: AK (Esbo Finland) (represented by D. Abreu Caldas, S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The applicant claims that the Court should:

— Declare and rule that,

— The judgment of the Civil Service Tribunal (Third Chamber) of 13 March 2012 in Case F-91/10 *AK* v *European Commission* is set aside;

— The Commission is ordered to pay the applicant:

— compensation for the loss of a 95 % chance of being promoted to grade A4 in promotion year 2003, 2005 or at the latest 2007, in the sum of EUR 375 295, EUR 204 996 and EUR 90 130 respectively, including therein the lump sum of EUR 4 000 already paid, in addition to the regularisation of her pension rights by payment of the corresponding contributions;

— EUR 55 000, in addition to the EUR 15 000 already paid, in respect of the non-pecuniary damage suffered as a result of the continuation of her irregular administrative situation despite, in particular, the judgments of 20 April 2005 and 6 October 2009 of the General Court and of 13 December 2007 of the European Civil Service Tribunal and the decision of 23 April 2007 of the Appointing Authority to uphold the claim brought by the applicant on 4 September 2006;

— The Commission is ordered to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an error of law since the CST based its findings on career development reports (CDRs) which it excluded from the file itself (relating to paragraphs 55, 56, 73 and 87 of the judgment under appeal).

2. Second plea in law, alleging an error of law in the assessment of the non-pecuniary damage and an infringement of the principle of proportionality, since the CST reduced the assessment of the non-pecuniary damage to EUR 15 000 taking account solely of the particularly extensive delay in drawing up the various CDRs and by restricting the extent of the non-pecuniary damage to the period during which the applicant was still working, without taking other parameters into account such as the applicant's state of uncertainty and worry as regards her professional future beyond the period during which she was still working (relating to paragraphs 63 and 83 et seq. of the judgment under appeal).

3. Third plea in law, alleging an error of law in the assessment of the damage due to the loss of a chance to be promoted and an infringement of the duty to state reasons in that the CST was not entitled to conclude, solely on the basis of the merit points and promotion thresholds, that the probability that the applicant would be promoted was low, on the one hand, and the CST assessed the damage of a loss of a chance to be promoted at EUR 4 000 as a lump sum without giving the least explanation as regards the reasoning which led it to that conclusion, on the other (relating to paragraphs 71 to 73 and 89 et seq. of the judgment under appeal).

Action brought on 30 April 2013 — Kompas MTS v Parliament and Others

(Case T-315/13)

(2013/C 233/20)

Language of the case: German

Parties

Applicant: Kompas mejni turistični servis d.d. (Kompas MTS d.d.) (Ljubljana, Slovenia) (represented by: J. Tischler, lawyer)

Defendants: European Parliament, European Commission and Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Order the European Union to pay the sum of EUR 846 000 plus interest at the rate of 8 % or declare that a right to compensation for damage against the European Union exists;

— Order the defendants to pay the necessary costs pursuant to Article 87(2) of the Rules of Procedure.

Pleas in law and main arguments

The applicant seeks compensation for damage in essence on the basis of the adoption of Article 5(6)(e) of Directive 2001/37/EC [1]. It takes the view that it was only due to the adoption of that provision that it was possible for the Austrian legislature to restrict the importation of tobacco products on which the text was not in German. The applicant submits that that quantitative restriction on imports was caused by the adoption of Directive 2001/37, by which the defendants infringed the principle of proportionality, the principle of non-discrimination, the fundamental right to property and the freedom to conduct a business.

[1] Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products (OJ 2001 L 194, p. 26).

Action brought on 13 June 2013 — Adorisio and Others v Commission

(Case T-321/13)

(2013/C 233/21)

Language of the case: English

Parties

Applicants: Stefania Adorisio (Roma, Italy) and 367 others (represented by: F. Sciaudone, L. Dezzani, D. Contini, R. Sciaudone and S. Frazzani, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— Annul the Commission's decision of 22 February 2013 (C(2013) 1053 final), relating to State aid SA.35382 (2013/N) — The Netherlands (Rescue SNS REAAL 2013), (OJ 2013 C 104, p. 3);

— Order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on five pleas in law.

1. First plea in law, alleging infringement Article 107(3)(b) TFEU and manifest error of assessment, as:

   — The contested aid measures are not related to exceptional circumstances, but rather to SNS REAAL's management failure and poor business skills;

   — The alleged disturbance to the Dutch economy is not serious. The Dutch authorities have not proved the existence of serious social and economic difficulties;

   — The alleged disturbance does not concern even one entire economic sector, let alone the entire economy of the Netherlands. Indeed, the Dutch Government has not demonstrated that SNS Bank's bankruptcy would have had systemic implications on the Dutch financial system and, more globally, on the whole Dutch economy and, in this respect, has not provided a quantitative estimate of the potential consequences of an insolvency of the bank for the entire economy.

2. Second plea in law, alleging violation of Article 4(3) of Council Regulation (EC) No 659/99 [1], as the Commission's decision contains a number of conditions imposed by the Commission and aimed at amending the notified aid measures, which is contrary to Article 4(3) of Council Regulation (EC) No 659/99. Indeed, under such provision, the Commission is not granted, in the preliminary investigation phase, the power to intervene on the State aid measure notified and change it through conditions or other requests imposed on the Member State.

3. Third plea in law, alleging violation of Article 4(4) of Council Regulation (EC) No 659/99, as there were elements and circumstances proving that there were serious doubts about the compatibility of the measures with the common market, such as the inconsistency between the Commission's statement *'that Dutch banks performed well in the latest round of EBA* (NB: European Banking Authority) *stress tests thanks to a favourable weighting of risk-weighted assets (including mortgage loans) and should be able to withstand a heightened level of defaults'* and the passive acceptance of the Dutch authorities' argument that the Dutch banking sector is instead weak and that the use of the Dutch DGS (Deposit Guarantee Scheme) would have

worsened the sector, or the fact that the contested decision contains conditions which represent another clear indication that the opening of the formal investigation procedure was necessary.

4. Fourth plea in law, alleging violation of the applicants' rights, as:

   — There is no evidence that the applicants' complaint against the State aid measures was the object of any investigation and analysis. Indeed it was not referred to in the contested decision;

   — The applicants were not informed in any way of the contested decision.

5. Fifth plea in law, alleging violation of Article 17 of the Charter of Fundamental Rights of the European Union, as:

   — The application of State aid rules cannot violate other EU rights, such as the right to property. In the instant case, the Commission could not rely on expropriation of investments without even analysing if that act was being carried out according to the law. Expropriation is per se a violation of the right to property and the Commission could not ignore this circumstance in its assessment;

   — The Commission should have verified the conditions and terms of such expropriation, in order to decide if that was an element that it could rely on in assessing the aid measures.

(1) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1)

Action brought on 19 July 2013 — CSF v European Commission

(Case T-337/13)

(2013/C 233/22)

Language of the case: Italian

Parties

Applicant: CSF Srl (Grumolo delle Abbadesse, Italy) (represented by: R. Santoro, S. Armellini and R. Bugaro, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision 2013/173/EU published on 10 April 2013 and notified to the applicant on 16 April 2013;

— order the Commission to pay the costs of the present proceedings.

Pleas in law and main arguments

The present action contests Commission Decision 2013/173/EU of 8 April 2013 'on a measure taken by Denmark according to Article 11 of Directive 2006/42/EC of the European Parliament and of the Council prohibiting a type of multi-purpose earth-moving machinery'. That decision found the ban imposed by the Danish authorities to be justified (OJ 2013 L 101, p. 29).

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

1. First plea in law, alleging breach of Articles 5, 6(1), 7 and 11 of Directive 2006/42/EC and points 1.1.2 and 3.4.4 of Annex I thereto.

   — It is submitted in that regard that the contested decision is not compatible with the above provisions since it did not take into account the fact that, in reality, the FOPS protective structures for the applicant's Multione S630 machines are mandatory in all cases in which use of the machines exposes the operator to the risk of falling objects or material.

2. Second plea in law, alleging breach of the principle of equal treatment.

   — It is submitted in that regard that the Danish measure which the contested decision finds to be justified imposed restrictive measures solely on the movement of multi-purpose Multione S630 machines, even though many other multi-purpose machines similar in type to the Multione S630, and used in the same way, are on the market in Denmark without being obliged to have FOPS.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 24 June 2013 — ZZ v EEAS

(Case F-59/13)

(2013/C 233/23)

Language of the case: French

Parties

Applicant: ZZ (represented by: D. de Abreu Caldas, A. Coolen, É. Marchal and S. Orlandi, lawyers)

Defendant: European External Action Service

Subject-matter and description of the proceedings

Annulment of the decision rejecting the applicant's application to have his successive fixed-term employment contracts reclassified as a contract of indefinite duration and to have his period completed as an auxiliary member of the contract staff recognised as a period of service completed as a member of the contract staff.

Form of order sought

— Annul the decision rejecting the applicant's application;

— Reclassify his contract of an auxiliary member of the contract staff as a contract of indefinite duration of a member of the contract staff under Article 3a of the CEOS;

— Order the EEAS to pay the costs.

2013/C 233/13 Case T-206/12: Judgment of the General Court of 3 July 2013 — GRE v OHIM — Villiger Söhne (LIBERTE american blend against a red background) (Community trade mark — Opposition proceedings — Application for the Community figurative mark LIBERTE american blend — Earlier Community word mark La LIBERTAD — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009) ... 8

2013/C 233/14 Case T-236/12: Judgment of the General Court of 3 July 2013 — Airbus v OHIM (NEO) (Community trade mark — Application for the Community word mark NEO — Absolute grounds for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 — Extent of the examination to be carried out by the Board of Appeal — Examination as to the merits conditional on the admissibility of the action — Articles 59 and 64(1) of Regulation (EC) No 207/2009 — Obligation to state reasons — Article 75 of Regulation (EC) No 207/2009 — Examination of the facts by the Office of its own motion — Article 76 of Regulation (EC) No 207/2009) ... 8

2013/C 233/15 Case T-243/12: Judgment of the General Court of 3 July 2013 — Warsteiner Brauerei Haus Cramer v OHIM (Community trade mark — Opposition proceedings — Application for the Community figurative mark ALOHA 100 % NATURAL — Earlier national word mark ALOA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009) ... 9

2013/C 233/16 Case T-301/12: Judgment of the General Court of 4 July 2013 — Laboratoires CTRS v Commission (Medicinal products for human use — Application for authorisation to market the medicinal product Orphacol — Commission decision refusing to grant authorisation — Regulation (EC) No 726/2004 — Directive 2001/83/EC — Well-established medicinal use — Exceptional circumstances) ... 9

2013/C 233/17 Case T-258/12: Order of the General Court of 2 July 2013 — Mederer v OHIM — Katjes Fassin (SOCCER GUMS) (Community trade mark — Opposition — Withdrawal of the opposition — No need to adjudicate) ... 10

2013/C 233/18 Case T-88/13 P: Appeal brought on 14 February 2013 by Z against the judgment of the Civil Service Tribunal of 5 December 2012 in Joined Cases F-88/09 and F-48/10, Z v Court of Justice ... 10

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