

# Official Journal of the European Union

# C 245



English edition

## Information and Notices

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## IV

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## COURT OF JUSTICE OF THE EUROPEAN UNION

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(2014/C 245/01)

**Last publication**

OJ C 235, 21.7.2014

**Past publications**

OJ C 223, 14.7.2014

OJ C 212, 7.7.2014

OJ C 202, 30.6.2014

OJ C 194, 24.6.2014

OJ C 184, 16.6.2014

OJ C 175, 10.6.2014

These texts are available on:

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

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## V

(Announcements)

## COURT PROCEEDINGS

## COURT OF JUSTICE

**Appeal brought on 13 January 2014 by Associazione sportiva Taranto calcio Srl against the order of the General Court (Ninth Chamber) delivered on 19 November 2013 in Case T-476/13 Associazione sportiva Taranto calcio Srl v Italian Republic**

(Case C-11/14 P)

(2014/C 245/02)

*Language of the case: Italian*

**Parties**

*Appellant:* Associazione sportiva Taranto calcio Srl (represented by: N. Russo, avvocato)

*Other party to the proceedings:* Italian Republic

By order of 30 April 2014, the Court of Justice (Sixth Chamber) dismissed the appeal.

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**Request for a preliminary ruling from the Tribunale di Milano (Italy) lodged on 27 February 2014 — Unione Nazionale Industria Conciaria (UNIC), Unione Nazionale dei Consumatori di Prodotti in Pelle, Materie Concianti, Accessori e Componenti (Unicopel) v FS Retail, Luna srl, Gatsby srl**

(Case C-95/14)

(2014/C 245/03)

*Language of the case: Italian*

**Referring court**

Tribunale di Milano

**Parties to the main proceedings**

*Applicants:* Unione Nazionale Industria Conciaria (UNIC), Unione Nazionale dei Consumatori di Prodotti in Pelle, Materie Concianti, Accessori e Componenti (Unicopel)

*Defendants:* FS Retail, Luna srl, Gatsby srl

**Questions referred**

- (1) Do Articles 34, 35, and 36 of the Treaty on the Functioning of the European Union, correctly construed, preclude the application of Article 3(2) of [Italian] Law No 8 of 14 January 2013 — under which it is compulsory, in the case of products obtained from working carried out in foreign countries but which use the Italian word 'pelle' [fine leather], to affix a label thereto indicating the country of origin — to products made of leather lawfully worked or placed on the market in other Member States of the European Union, since that law constitutes a measure having an effect equivalent to a quantitative restriction prohibited under Article [34] TFEU and not justified by Article 36 of that Treaty?

- (2) Do Articles 34, 35, and 36 of the Treaty on the Functioning of the European Union, correctly construed, preclude the application of Article 3(2) of [Italian] Law No 8 of 14 January 2013 — under which it is compulsory, in the case of products obtained from working carried out in foreign countries but which use the Italian word ‘pelle’, to affix a label thereto indicating the country of origin — to products made of leather obtained from working carried out in non-member countries and not already lawfully placed on the market in the European Union, since that law constitutes a measure having an effect equivalent to a quantitative restriction prohibited under Article [34] TFEU and not justified by Article 36 of that Treaty?
- (3) Do Articles 3 and 5 of Directive 94/11/EC <sup>(1)</sup>, correctly construed, preclude the application of Article 3(2) of [Italian] Law No 8 of 14 January 2013 — under which it is compulsory, in the case of products obtained from working carried out in foreign countries but which use the Italian word ‘pelle’, to affix a label thereto indicating the country of origin — to products made of leather lawfully worked, or lawfully placed on the market, in other Member States of the European Union?
- (4) Do Articles 3 and 5 of Directive 94/11/EC, <sup>(2)</sup> correctly construed, preclude the application of Article 3(2) of [Italian] Law No 8 of 14 January 2013, under which it is compulsory, in the case of products made of leather obtained from working carried out in non-member countries and not already lawfully placed on the market in the European Union, to affix a label thereto indicating the country of origin?
- (5) Does Article 60 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013, correctly construed, preclude the application of Article 3(2) of [Italian] Law No 8 of 14 January 2013 — under which it is compulsory, in the case of products obtained from working carried out in foreign countries but which use the Italian word ‘pelle’, to affix a label thereto indicating the country of origin — to products made of leather obtained from working carried out in Member States of the European Union or not already lawfully placed on the market in the European Union?
- (6) Does Article 60 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013, correctly construed, preclude the application of Article 3(2) of [Italian] Law No 8 of 14 January 2013 — under which it is compulsory, in the case of products obtained from working carried out in foreign countries but which use the Italian word ‘pelle’, to affix a label thereto indicating the country of origin — to products made of leather obtained from working carried out in non-member countries and not already lawfully placed on the market in the European Union?

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<sup>(1)</sup> OJ 1994 L 100, p. 37.

<sup>(2)</sup> OJ 1994 L 100, p. 37.

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**Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 18 April 2014 —  
Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale  
Bundesverband e.V. v Teekanne GmbH & Co. KG**

**(Case C-195/14)**

(2014/C 245/04)

*Language of the case: German*

**Referring court**

Bundesgerichtshof

**Parties to the main proceedings**

*Applicant:* Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e.V.

*Defendant:* Teekanne GmbH & Co. KG

**Question referred**

Is it permissible for the labelling, presentation and advertising of foodstuffs to give the impression, by means of their appearance, description or pictorial representation, that a particular ingredient is present, even though that ingredient is not in fact present and this is apparent solely from the list of ingredients provided for under Article 3(1)(2) of Directive 2000/13/EC <sup>(1)</sup>?

<sup>(1)</sup> Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29), as most recently amended by Council Directive 2013/20/EU of 13 May 2013 adapting certain directives in the field of food safety, veterinary and phytosanitary policy, by reason of the accession of the Republic of Croatia (OJ 2013 L 158, p. 234).

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**Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary)  
lodged on 22 April 2014 — János Kárász v Nyugdíjfolyósító Igazgatóság**

**(Case C-199/14)**

(2014/C 245/05)

*Language of the case: Hungarian*

**Referring court**

Fővárosi Közigazgatási és Munkaügyi Bíróság

**Parties to the main proceedings**

*Applicant:* János Kárász

*Defendant:* Nyugdíjfolyósító Igazgatóság

**Question referred**

May Article 17 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that cases of cessation, interruption or suspension of the payment of a retirement pension to which an entitlement has arisen because a certain age has been reached constitute an infringement of the right to property laid down in that provision?

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**Request for a preliminary ruling from the Tatabányai Közigazgatási és Munkaügyi Bíróság (Hungary)  
lodged on 23 April 2014 — István Tivadar Szabó v Nemzeti Adó- és Vámhivatal Közép-dunántúli  
Regionális Adó Főigazgatósága**

**(Case C-204/14)**

(2014/C 245/06)

*Language of the case: Hungarian*

**Referring court**

Tatabányai Közigazgatási és Munkaügyi Bíróság

**Parties to the main proceedings**

*Applicant:* István Tivadar Szabó

*Defendant:* Nemzeti Adó- és Vámhivatal Közép-dunántúli Regionális Adó Főigazgatósága

**Questions referred**

1. In administrative-law proceedings the object of which is judicial review, in the context of an action brought by the individual concerned, of a decision adopted by an administrative authority of the Member State, is the national court obliged to consider whether the provisions of national law on which the administrative decision is founded are contrary to any provision of EU law which is directly applicable and which is also relevant in the case concerned?



2. If question 1 is answered in the affirmative, does that mean that the national court is obliged to do so of its own motion or only in the event of one of the parties expressly pleading an infringement of EU law?
3. May Articles 26(2) TFEU, 35 TFEU and 56 TFEU be interpreted as precluding rules of a Member State such as those in Paragraphs 24/C and 24/D of the General Tax Law where, under such rules, a Hungarian company which carries on business partly in other Member States of the European Union may not appoint as a senior executive a Hungarian citizen who has previously held a senior executive position in another Hungarian company which carries on business in the internal market, solely on the ground that other Hungarian company has accumulated a tax debt of a certain level, when the accumulation of that debt is not attributable to that Hungarian citizen in his capacity as a former senior executive?

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**Request for a preliminary ruling from the Kúria (Hungary) lodged on 12 May 2014 — Weltimmo s.r.  
o. v Nemzeti Adatvédelmi és Információszabadság hatóság**

(Case C-230/14)

(2014/C 245/07)

*Language of the case: Hungary*

#### **Referring court**

Kúria

#### **Parties to the main proceedings**

*Applicant:* Weltimmo s.r.o.

*Defendant:* Nemzeti Adatvédelmi és Információszabadság hatóság

#### **Questions referred**

1. Can Article 28(1) of Directive 95/46/EC <sup>(1)</sup> of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ('the data protection directive') be interpreted as meaning that the provisions of national law of a Member State are applicable in its territory to a situation in which a data controller runs a property-dealing website established only in another Member State and also advertises properties situated in the territory of that first Member State and the property owners have forwarded their personal data to a facility (server) for data storage and data processing belonging to the operator of the website in that other Member State?
2. Can Article 4(1)(a) of the data protection directive, read in conjunction with recitals 18 to 20 of its preamble and Articles 1(2) and 28(1) thereof, be interpreted as meaning that the Hungarian Data Protection and Freedom of Information Authority (a Magyar Adatvédelmi és Információszabadság Hatóság, 'the data protection authority') may not apply the Hungarian law on data protection, as national law, to an operator of a property dealing website established only in another Member State, even if it also advertises Hungarian property whose owners transfer the data relating to such property probably from Hungarian territory to a facility (server) for data storage and data processing belonging to the operator of the website?
3. Is it significant for the purposes of interpretation that the service provided by the data controller who operates the website is directed at the territory of another Member State?
4. Is it significant for the purposes of interpretation that the data relating to the properties in the other Member State and the personal data of the owners are uploaded in fact from the territory of that other Member State?
5. Is it significant for the purposes of interpretation that the personal data relating to those properties are the personal data of citizens of another Member State?
6. Is it significant for the purposes of interpretation that the owners of the undertaking established in Slovakia have their habitual residence in Hungary?

7. If it appears from the answers to the above questions that the Hungarian data protection authority may act but must apply the law of the Member State of establishment and may not apply national law, must Article 28(6) of the data protection directive be interpreted as meaning that the Hungarian data protection authority may only exercise the powers provided for by Article 28(3) of the data protection directive in accordance with the provisions of the legislation of the Member State of establishment and accordingly may not impose a fine?
8. May the term 'adatfeldolgozás' (technical manipulation of data) used in both Article 4(1)(a) and in Article 28(6) of the [Hungarian version of the] data protection directive [to translate 'data processing'] be considered to be equivalent to the usual term for data processing, 'adatkezelés', used in connection with that directive?

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(<sup>1</sup>) OJ 1995 L 281, p. 31.

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**Action brought on 12 May 2014 — European Commission v Kingdom of the Netherlands**

**(Case C-233/14)**

(2014/C 245/08)

*Language of the case: Dutch*

**Parties**

*Applicant:* European Commission (represented by: M. van Beek and C. Gheorghiu, Agents)

*Defendant:* Kingdom of the Netherlands

**Form of order sought**

The Commission claims that the Court should:

- declare that, by restricting access to public transport passes with preferential fares for students who pursue their studies in the Netherlands to Netherlands students who are enrolled in private and public educational establishments in the Netherlands and to students from other Member States who are economically active or have obtained a permanent right of residence in the Netherlands, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 18 TFEU (in conjunction with Articles 20 TFEU and 21 TFEU), and Article 24(2) of Directive 2004/38/EC (<sup>1</sup>) of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States;
- order the Kingdom of the Netherlands to pay the costs.

**Pleas in law and main arguments**

1. While Netherlands students can benefit from public transport passes for students (the OV-studentenkaart) ('the student public transport pass') with which they are able to travel for free or at a reduced fare on public transport in the Netherlands, students from other Member States who are not economically active in the Netherlands or have not obtained a permanent right of residence there must pay the full fare.
2. The Commission is of the opinion that the Netherlands legislation results in direct discrimination based on nationality, given that EU citizens who are not Dutch are treated less favourably than Dutch persons. The Netherlands has thus failed to fulfil its obligations under Article 18 TFEU in conjunction with Articles 20 TFEU and 21 TFEU.
3. Next, there is indirect discrimination based on nationality if a national measure, although worded in neutral terms, works to the disadvantage of a much higher percentage of certain persons, unless that difference in treatment is justified by objective factors unrelated to any discrimination on grounds of nationality.

4. Since, in the context of the Erasmus programme, there are more foreign students studying in the Netherlands than Netherlands students, who have opted to pursue their complete course of study abroad, and since, instead of a student public transport pass, a monthly 'portable funding for studies' of EUR 89,13 (2013 rate) is granted to the latter group of students, it is only ultimately foreign students in Netherlands who receive no form of financial benefit or no advantage in the form of the student public transport pass. In the Commission's submission, this constitutes an indirect form of discrimination on the basis of Article 24 of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.
5. Since the Netherlands has thus far failed to adopt all measures to bring to an end the difference of treatment of which foreign students are the subject in relation to the possibility of claiming entitlement to the student public transport pass, the Commission concludes that the Netherlands has failed to fulfil its obligations under Article 18 TFEU (in conjunction with Articles 20 TFEU and 21 TFEU), and Article 24(2) of Directive 2004/38/EC.

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(<sup>1</sup>) Directive of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).

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**Request for a preliminary ruling from the Högsta förvaltningsdomstolen (Sweden) lodged on 2 June 2014 — Skatteverket v David Hedqvist**

(Case C-264/14)

(2014/C 245/09)

*Language of the case: Swedish*

**Referring court**

Högsta förvaltningsdomstolen

**Parties to the main proceedings**

*Applicant:* Skatteverket

*Defendant:* David Hedqvist

**Questions referred**

1. Is Article 2(1) of the VAT Directive (<sup>1</sup>) to be interpreted as meaning that transactions in the form of what has been designated as the exchange of virtual currency for traditional currency and vice versa, which is effected for consideration added by the supplier when the exchange rates are determined, constitute the supply of a service effected for consideration?
2. If the answer to the first question is in the affirmative, is Article 135(1) to be interpreted as meaning that the abovementioned exchange transactions are tax exempt?

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(<sup>1</sup>) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. (OJ 2006 L 347, p. 1).

# GENERAL COURT

## Judgment of the General Court of 12 June 2014 — Intel v Commission

(Case T-286/09) <sup>(1)</sup>

*(Competition — Abuse of dominant position — Microprocessors market — Decision finding an infringement of Article 82 EC and Article 54 of the EEA Agreement — Loyalty rebates — ‘Naked’ restrictions — Classification as abuse — As-efficient-competitor analysis — Commission’s international jurisdiction — Obligation on the Commission to investigate — Limits — Rights of the defence — Principle of sound administration — Overall strategy — Fines — Single and continuous infringement — 2006 Guidelines on the method of setting fines)*

(2014/C 245/10)

Language of the case: English

### Parties

*Applicant:* Intel Corp. (Wilmington, Delaware, United States) (represented initially by K. Bacon, Barrister, M. Hoskins, N. Green QC, S. Singla, Barrister, I. Forrester QC, A. Parr, R. Mackenzie, Solicitors, and D. Piccinin, Barrister, and subsequently by I. Forrester, A. Parr, R. Mackenzie and D. Piccinin)

*Defendant:* European Commission (represented by: T. Christoforou, N. Khan, V. Di Bucci and M. Kellerbauer, Agents)

*Intervener in support of the applicant:* Association for Competitive Technology, Inc (Washington, DC, United States) (represented by: J.-F. Bellis, lawyer)

*Intervener in support of the defendant:* Union fédérale des consommateurs — Que choisir (UFC — Que choisir) (Paris, France) (represented initially by J. Franck, and subsequently by E. Nasry, lawyers)

### Re:

Action for annulment of Commission Decision C (2009) 3726 final of 13 May 2009 relating to a proceeding under Article 82 [EC] and Article 54 of the EEA Agreement (Case COMP/C-3/37.990 — Intel) or, alternatively, annulment or reduction of the fine imposed on the applicant

### Operative part of the judgment

*The General Court:*

1. *Dismisses the action;*
2. *Orders Intel Corp. to bear its own costs and to pay those incurred by the European Commission, with the exception of the Commission’s costs incurred in connection with the intervention of the Association for Competitive Technology, Inc., and the costs incurred by Union fédérale des consommateurs — Que choisir (UFC — Que choisir);*
3. *Orders the Association for Competitive Technology to bear its own costs and to pay the Commission’s costs incurred in connection with its intervention.*

<sup>(1)</sup> OJ C 220, 12.9.2009.

**Judgment of the General Court of 12 June 2014 — Sarc v Commission**(Case T-488/11) <sup>(1)</sup>

*(State aid — Software licence agreement — Decision finding no State aid — Actions for annulment — Competitive position not substantially affected — Inadmissibility — Procedural rights of the interested parties — Admissibility — Failure to initiate formal investigation procedure — No serious difficulties — Advantage)*

(2014/C 245/11)

Language of the case: English

**Parties**

*Applicant:* Scheepsbouwkundig Advies- en Rekencentrum (Sarc) BV (Bussum, Netherlands) (represented by: H. Speyart and R. Bolhaar, lawyers)

*Defendant:* European Commission (represented by: H. van Vliet, K. Talabér-Ritz and S. Noë, acting as Agents)

*Interveners in support of the defendant:* Kingdom of the Netherlands (represented initially by C. Wissels, M. Noort and B. Koopman, and subsequently by C. Wissels, M. Noort, J. Langer and M. Bulterman, acting as Agents); and Technische Universiteit Delft (Delft, Netherlands) (represented by: R. van den Tweel and P. Huurnink, lawyers).

**Re:**

Application for the annulment of Commission Decision C(2011) 642 final of 10 May 2011 relating to the State Aid Proceedings NN 68/2010 — Netherlands, declaring after the preliminary examination stage that the licence agreement for the use of a software source code concluded between Technische Universiteit Delft and Delftship BV does not constitute State aid

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders Scheepsbouwkundig Advies- en Rekencentrum (Sarc) BV to bear its own costs and pay those incurred by the European Commission and by the Technische Universiteit Delft;
3. Orders the Kingdom of the Netherlands to bear its own costs.

<sup>(1)</sup> OJ C 331, 12.11.2011.

**Judgment of the General Court of 11 June 2014 — Syria International Islamic Bank v Council**(Case T-293/12) <sup>(1)</sup>

*(Common foreign and security policy — Restrictive measures against Syria — Freezing of funds — Manifest error of assessment — Burden of proof — Claim for damages)*

(2014/C 245/12)

Language of the case: French

**Parties**

*Applicant:* Syria International Islamic Bank PJSC (Damascus, Syria) (represented by: G. Laguesse and J.-P. Buyle, lawyers)

*Defendant:* Council of the European Union (represented by: B. Driessen and D. Gicheva, acting as Agents)

**Re:**

Firstly, application for annulment of Council Implementing Regulation (EU) No 544/2012 of 25 June 2012 implementing Article 32(1) of Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2012 L 165, p. 20, corrigendum OJ 2012 L 173, p. 27) and of Council Implementing Decision 2012/335/CFSP of 25 June 2012 implementing Decision 2011/782/CFSP concerning restrictive measures against Syria (OJ 2012 L 165, p. 80), in so far as they concern the applicant and, secondly, a claim for damages.

**Operative part of the judgment**

*The Court:*

1. *Annuls Council Implementing Regulation (EU) No 544/2012 of 25 June 2012 implementing Article 32(1) of Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria in so far as it relates to Syria International Islamic Bank PJSC;*
2. *Annuls Council Implementing Decision 2012/335/CFSP of 25 June 2012 implementing Decision 2011/782/CFSP concerning restrictive measures against Syria in so far as it relates to Syria International Islamic Bank;*
3. *Dismisses the claim for damages as inadmissible;*
4. *Orders Syria International Islamic Bank to bear one quarter of its own costs;*
5. *Orders the Council of the European Union to bear its own costs and to pay three quarters of those incurred by Syria International Islamic Bank.*

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<sup>(1)</sup> OJ C 258, 25.8.2012.

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**Judgment of the General Court of 13 June 2014 — Grupo Flexi de León v OHIM (FLEXI)**

(Case T-352/12) <sup>(1)</sup>

**(Community trade mark — Application for Community word mark FLEXI — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)**

(2014/C 245/13)

*Language of the case: Spanish*

**Parties**

*Applicant:* Grupo Flexi de León, SA de CV (León, Mexico) (represented by: M. Zarobe, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Crespo Carrillo, acting as Agent)

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 4 May 2012 (Case R 1335/2011-2) concerning an application for registration of the word sign FLEXI as a Community trade mark.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. Orders Grupo Flexi de León, SA de CV to pay the costs.

<sup>(1)</sup> OJ C 331, 27.10.2012.

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**Judgment of the General Court of 11 June 2014 — Klingel v OHIM — Develey (JUNGBORN)**  
**(Case T-401/12) <sup>(1)</sup>**

**(Community trade mark — Opposition proceedings — International registration designating the European Community — Word mark JUNGBORN — Earlier national word mark BORN — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)**

(2014/C 245/14)

Language of the case: German

**Parties**

*Applicant:* Robert Klingel OHG (Pforzheim, Germany) (represented by: T. Zeiher, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court:* Develey Holding GmbH & Co. Beteiligungs KG (Unterhaching, Germany) (represented by: R. Kunz-Hallstein and H. Kunz-Hallstein, lawyers)

**Re:**

Action brought against the decision of the Fourth Board of Appeal of OHIM of 9 July 2012 (Case R 936/2011-4) relating to opposition proceedings between Develey Holding GmbH & Co. Beteiligungs KG and Robert Klingel OHG.

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders Robert Klingel OHG to pay the costs.

<sup>(1)</sup> OJ C 331, 27.10.2012.

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**Judgment of the General Court of 11 June 2014 — Golam v OHIM — Pentafarma (METABOL)**  
**(Case T-486/12) <sup>(1)</sup>**

**(Community trade mark — Opposition proceedings — Application for the Community word mark METABOL — Earlier national word mark METABOL-MG — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)**

(2014/C 245/15)

Language of the case: English

**Parties**

*Applicant:* Sofia Golam (Athens, Greece) (represented by: N. Trovas, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Geroulakos, acting as Agent)

*Other party to the proceedings before the Board of Appeal of OHIM:* Pentafarma-Sociedade Tecnico-Medicinal, SA (Prior Velho, Portugal)

**Re:**

Action brought against the decision of the First Board of Appeal of OHIM of 19 July 2012 (Case R 1901/2011-1), relating to opposition proceedings between Pentafarma-Sociedade Tecnico-Medicinal, SA and Ms Sofia Golam

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action.*
2. *Orders Ms Sofia Golam to pay the costs.*

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<sup>(1)</sup> OJ C 9, 12.1.2013.

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**Judgment of the General Court of 11 June 2014 — *Communicaid Group Ltd v European Commission*  
(Case T-4/13) <sup>(1)</sup>**

***(Public service contracts — Tendering procedure — Provision of language-training services for staff of the institutions, bodies and agencies of the European Union in Brussels — Rejection of tenders submitted by the applicant — Principle of transparency — Non-discrimination — Equal treatment — Article 94 of the Financial Regulation — Selection criteria — Obligation to state reasons — Award criteria — Manifest error of assessment)***

(2014/C 245/16)

*Language of the case: English*

**Parties**

*Applicants:* Communicaid Group Ltd (London, United Kingdom) (represented by: C. Brennan, Solicitor, F. Randolph QC, and M. Gray, Barrister)

*Defendant:* European Commission (represented by: S. Delaude and S. Lejeune Agents, assisted by P. Wytinck and B. Hoorelbeke, lawyers)

**Re:**

Application for the annulment, in whole or in part, of the decisions by which the Commission refused to rank Communicaid Group Ltd in first place for Lots 1, 2, 4, 7, 8 and 9 of the Call for Tenders HR/R3/PR/2012/002 relating to framework agreements for the provision of language training for staff of the institutions, bodies and agencies of the European Union in Brussels (Belgium)

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*
2. *Orders Communicaid Group Ltd to pay the costs, including those incurred in the proceedings for interim measures.*

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<sup>(1)</sup> OJ C 71, 9.3.2013.



**Judgment of the General Court of 11 June 2014 — Golam v OHIM — Glaxo Group (METABIOMAX)**(Case T-62/13) <sup>(1)</sup>**(Community trade mark — Opposition proceedings — Application for the Community word mark METABIOMAX — Earlier national word mark BIOMAX — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)**

(2014/C 245/17)

Language of the case: Greek

**Parties***Applicant:* Sofia Golam (Athens, Greece) (represented by: N. Trovas, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Geroulakos, acting as Agent)*Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court:* Glaxo Group Ltd (Greenford, United Kingdom) (represented by: G. Ballas and N. Prentoulis, lawyers)**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 30 October 2012 (Case R 2089/2011-2), relating to opposition proceedings between Glaxo Group Ltd and Ms Sofia Golam

**Operative part of the judgment***The Court:*

1. *Dismisses the action;*
2. *Orders Ms Sofia Golam to pay the costs.*

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<sup>(1)</sup> OJ C 86, 23.3.2013.

**Judgment of the General Court of 13 June 2014 — K-Swiss v OHIM — Künzli SwissSchuh (parallel stripes on a shoe)**(Case T-85/13) <sup>(1)</sup>**(Community trade mark — Invalidity proceedings — Community figurative mark representing parallel stripes on a shoe — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009)**

(2014/C 245/18)

Language of the case: English

**Parties***Applicant:* K-Swiss, Inc. (Westlake, California, United States) (represented by: R. Niebel and K. Tasma, lawyers)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: Ó. Mondéjar Ortuño, acting as Agent)*Other party to the proceedings before the Board of Appeal of OHIM:* Künzli SwissSchuh AG (Windisch, Switzerland)**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 30 October 2012 (Case R 174/2011-2), relating to invalidity proceedings between Künzli SwissSchuh AG and K-Swiss, Inc.

**Operative part of the judgment**

The Court:

- 1) Dismisses the action;
- 2) Orders K-Swiss, Inc. to pay the costs.

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<sup>(1)</sup> OJ C 123, 27.4.2013.

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**Judgment of the General Court of 11 June 2014 — Golam v OHIM — meta Fackler Arzneimittel (METABIOMAX)**

(Case T-281/13) <sup>(1)</sup>

**(Community trade mark — Opposition proceedings — Application for the Community word mark METABIOMAX — Earlier national word mark metabiarex — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)**

(2014/C 245/19)

Language of the case: Greek

**Parties**

*Applicant:* Sofia Golam (Athens, Greece) (represented by: N. Trovas, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Geroulakos, acting as Agent)

*Other party to the proceedings before the Board of Appeal of OHIM:* meta Fackler Arzneimittel GmbH (Springe, Germany)

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 14 March 2013 (Case R 2022/2011-2), relating to opposition proceedings between meta Fackler Arzneimittel GmbH and Ms Sofia Golam

**Operative part of the judgment**

The Court:

1. Dismisses the action;
2. Orders Ms Sofia Golam to pay the costs.

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<sup>(1)</sup> OJ C 215, 27.7.2013.

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**Action brought on 28 March 2014 — Victor International/OHIM — Ovejero Jiménez and Becerra Guibert (VICTOR)**

(Case T-204/14)

(2014/C 245/20)

Language in which the application was lodged: English

**Parties**

*Applicant:* Victor International GmbH (Elmshorn, Germany) (represented by: R. Kaase and J. Plate, lawyers)

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

*Other parties to the proceedings before the Board of Appeal:* Gregorio Ovejero Jiménez and María Luisa Cristina Becerra Guibert (Alicante, Spain)

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 January 2014 in Case R 2208/2012-2 insofar as the opposition was upheld;
- Order the defendant to pay the costs of the proceedings;
- Order the intervener to pay the costs of the proceedings before the OHIM.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'VICTOR' for goods and services in Classes 25, 28 and 35 — Community trade mark application No 8 409 963

*Proprietor of the mark or sign cited in the opposition proceedings:* Gregorio Ovejero Jiménez and María Luisa Cristina Becerra Guibert

*Mark or sign cited in opposition:* Several national figurative marks containing the word element 'Victoria' for goods and services in Classes 25 and 35

*Decision of the Opposition Division:* Partially upheld the opposition

*Decision of the Board of Appeal:* Partially annulled the contested decision

*Pleas in law:* Infringement of Article 15(1) of Regulation No 207/2009 in combination with Article 42(2) and (4) of Regulation No 207/2009 and Rule 22(3) and (4) of the Regulation No 2868/95; infringement of Article 15(1)(a) in conjunction with Article 42(2) and (3) of Regulation No 207/2009 and infringement of Article 8(1)(b) of Regulation No 207/2009.

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**Action brought on 1 April 2014 — Mederer/OHIM — Cadbury Netherlands International Holdings (Gummi Bear-Rings)**

**(Case T-210/14)**

(2014/C 245/21)

*Language in which the application was lodged: English*

**Parties**

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

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

*Other party to the proceedings before the Board of Appeal:* Cadbury Netherlands International Holdings BV (Breda, Netherlands)

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 16 December 2013 in case R 225/2013-5;
- Order the defendant and the other party to the proceedings to pay the costs incurred during the proceedings before the OHIM and the General Court.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark containing the word elements 'Gummi Bear-Rings' for goods in Class 30 — International registration No 1 051 028 designating the European Union

*Proprietor of the mark or sign cited in the opposition proceedings:* Cadbury Netherlands International Holdings BV

*Mark or sign cited in opposition:* The national figurative mark containing the word element 'Gummy'

*Decision of the Opposition Division:* Upheld the opposition

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

*Pleas in law:* Infringement of Articles 8(1)(b) and 76(1) of Regulation No 207/2009

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**Action brought on 3 April 2014 — Klement v OHIM — Bullerjan (Form of an oven)**

**(Case T-211/14)**

(2014/C 245/22)

*Language in which the application was lodged:* English

**Parties**

*Applicant:* Toni Klement (Dippolddiswalde, Germany) (represented by: J. Weiser, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Bullerjan GmbH (Isernhagen-Kirchhorst, Germany)

**Form of order sought**

The applicant claims that the Court should:

- Alter the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 January 2014 in Case R 927/2013-1, so that the appeal brought by the applicant is upheld and CTM 3 723 822 is revoked in its entirety;
- In the alternative, annul the contested decision;
- Order OHIM, and as the case may be, the CTM proprietor/possible intervener to pay the costs for these proceedings and of the appeal procedure before OHIM.

**Pleas in law and main arguments**

*Registered Community trade mark in respect of which an application for revocation has been made:* Three-dimensional mark representing an oven for goods in Class 11 — Community trade mark registration No 3 723 822

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

*Party applying for revocation of the Community trade mark:* The applicant

*Decision of the Cancellation Division:* Rejected the application for revocation

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

*Pleas in law:* Infringement of Article 51(1)(a) of Regulation No 207/2009 in conjunction with Article 15 of Regulation No 207/2009

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**Action brought on 31 March 2014 — PSL/OHIM — Consortium Ménager Parisien (Representation of a watch)**

**(Case T-212/14)**

(2014/C 245/23)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* PSL Ltd (Kowloon, Hong-Kong) (represented by: R. Dissmann and J. Bogatz, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Consortium Ménager Parisien (Paris, France)

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 January 2014 in Case R 1495/2012-3;
- Order the defendant to pay the costs of the proceedings before the court as well as the appeal proceedings before the Board of Appeals.

**Pleas in law and main arguments**

*Registered Community design in respect of which a declaration of invalidity has been sought:* Design representing a watch for goods in Class 10-02 — Community Design No 1 600 560-0001

*Proprietor of the Community design:* The applicant

*Applicant for the declaration of invalidity of the Community design:* Consortium Menager Parisien

*Grounds for the application for a declaration of invalidity:* Lack of individual character within the meaning of Article 6(1)(b) of Regulation No 6/2002

*Decision of the Cancellation Division:* Rejected the application for invalidity

*Decision of the Board of Appeal:* Annulled the contested decision and declared the contested design invalid

*Pleas in law:* Infringement of Article 6 of Regulation No 6/2002

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**Action brought on 11 April 2014 — CBM Creative Brands Marken v OHIM — Aeronautica Militare — Stato Maggiore (Trecolore)**

**(Case T-227/14)**

(2014/C 245/24)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* CBM Creative Brands Marken GmbH (Zürich, Switzerland) (represented by: U. Lüken, M. Grundmann and N. Kerger, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Aeronautica Militare — Stato Maggiore (Rome, Italy)

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 January 2014 in Case R 253/2013-1 in so far as the First Board of Appeal annuls the decision of the Opposition Division and upholds the opposition against the application mark rejecting the application No 009 877 325 in regard of the goods in classes 18 and 25;
- Dismiss the opposition against Application No 009 877 325 in its entirety;
- Order OHIM to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'Trecolare' for goods and services in Classes 18, 25 and 35 — Community trade mark application No 9 877 325

*Proprietor of the mark or sign cited in the opposition proceedings:* Aeronautica Militare — Stato Maggiore

*Mark or sign cited in opposition:* The community and national word and figurative mark 'FRECCE TRICOLORI', for goods and services in Classes 9, 14, 16, 18, 20, 25, 28 and 41

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

*Decision of the Board of Appeal:* Annulled the contested decision in part

*Pleas in law:* Infringement of articles 8(1)(b) and 8(5) of Regulation No 207/2009

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**Action brought on 14 April 2014 — CBM Creative Brands Marken v OHIM — Aeronautica Militare — Stato Maggiore (TRECOLORE)**

**(Case T-228/14)**

(2014/C 245/25)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* CBM Creative Brands Marken GmbH (Zürich, Switzerland) (represented by: U. Lüken, M. Grundmann and N. Kerger, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Aeronautica Militare — Stato Maggiore (Rome, Italy)

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 January 2014 in Case R 594/2013-1 in so far as the First Board of Appeal upheld the decision of the opposition division rejecting the Application No 009 877 391 in regard of the goods in classes 18 and 25 and in regard of the services 'Retail services, including via websites and teleshopping, in relation to clothing, footwear, headgear, sunglasses, precious metals and their alloys and goods in precious metals or coated therewith, jewellery, precious stones, horological and chronometric instruments, leather and imitations of leather, and goods made of these materials, animal skins, hides, trunks and travelling bags, bags, handbags, wallets, purses, key cases, rucksacks, pouches, umbrellas, parasols and walking sticks, whips, harness and saddlery' of class 35;

- Dismiss the opposition against Application No 009 877 391 in its entirety;
- Order OHIM 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 containing the word element 'TRECLORE' for goods and services in Classes 18, 25 and 35 — Community trade mark application No 9 877 391

*Proprietor of the mark or sign cited in the opposition proceedings:* Aeronautica Militare — Stato Maggiore

*Mark or sign cited in opposition:* The community and national word and figurative mark 'FRECCE TRICOLORI', for goods and services in Classes 9, 14, 16, 18, 20, 25, 28 and 41

*Decision of the Opposition Division:* Partially rejected the opposition.

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

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation No 207/2009

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## **Action brought on 28 April 2014 — Argus Security Projects v Commission**

**(Case T-266/14)**

(2014/C 245/26)

*Language of the case: French*

### **Parties**

*Applicant:* Argus Security Projects Ltd (Limassol, Cyprus) (represented by: T. Bontinck and E. van Nuffel d'Heynsbroeck, lawyers)

*Defendant:* European Commission

### **Form of order sought**

- Annulment of the decision of the EUBAM Libya not to accept the tender submitted by Argus in the a call for tender negotiated procedure concerning the supply of security services as part of the European Union Integrated Border Management Assistance Mission in Libya (contract EUBAM-13-020), and the decision to award the contract to Garda;
- Order the defendant to pay the costs.

### **Pleas in law and main arguments**

In support of the action, the applicant relies on 3 pleas in law.

1. First plea in law, alleging an infringement of Article 110 of the Financial Regulation <sup>(1)</sup>, of the rules laid down in the specifications for the award of the contract, in particular points 4.1 and 12.1 of the instructions to tenderers, and of the principles of equal treatment of tenderers and non-discrimination, in so far as the EUBAM did not check the abilities of the successful tenderer to perform the contract in accordance with the requirements of the contract or failed to exercise its discretion as regards the expected technical qualities of the successful tender with the minimum rigour reasonably to be expected.

The applicant submits that the serious failings by the successful tenderer and its inability to carry out the contract awarded to it show that the tender was unrealistic and ought not to have been accepted by the adjudicating authority.

2. Second plea in law, alleging a substantive amendment to the initial conditions of the contract liable to distort the result of the call for tenders.

The applicant submits that the relation between the points awarded to the successful tenderer and to the applicant for all the assessment criteria would have been reversed if the successful tender had been assessed taking into account the conditions in which the successful tenderer performs the contract.

3. Third plea in law, alleging an infringement of the duty to state reasons, in so far as the adjudicating authority failed to comply with Article 113 of the Financial Regulation and Article 161(2) of the Delegated Regulation<sup>(2)</sup>, since the characteristics and relative advantages of the successful tender were not communicated within 15 calendar days following the applicant's request.

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<sup>(1)</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1).

<sup>(2)</sup> Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1).

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### Action brought on 5 May 2014 — Dyckerhoff Polska v Commission

(Case T-284/14)

(2014/C 245/27)

*Language of the case: Polish*

#### Parties

*Applicant:* Dyckerhoff Polska sp. z o.o. (Nowiny, Poland) (represented by: K. Kowalczyk, lawyer)

*Defendant:* European Commission

#### Form of order sought

The applicant claims that the Court should:

- annul Commission Decision 2013/448/EU of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2013 L 240, p. 27).

#### Pleas in law and main arguments

In support of its action, the applicant puts forward three pleas in law.

1. First plea in law:

- The adopted decision is incompatible with EU law, in particular with Directive 2003/87/EC of the European Parliament and the Council of 13 October 2003 and Commission Decision 2010/2/EU of 24 December 2009.

2. Second plea in law:

- Infringement of the principle of equal treatment by reason of the establishment of a uniform cross-sectoral correction factor for all sectors, failing thereby to take into account the fact that the sectors which are deemed to be exposed to a significant risk of carbon leakage, including that of cement production, ought to be treated in a manner different to sectors which are not exposed to such a significant risk;

and infringement of the principle of proportionality.



3. Third plea in law:

- Inapplicability, pursuant to Article 277 TFEU, of Article 10a(5) of Directive 2003/87/EC and Article 15(3) of Commission Decision 2011/278/EU, which form the basis on which the contested decision was adopted, in so far as it is possible to apply those provisions without taking account of Article 10a(12) to (18) of Directive 2003/87/EC, Article 16 of Commission Decision 2011/278/EU and Commission Decision 2010/2/EU, which confirm the need to proceed in a specific manner in those sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage, and inapplicability of the adoption by the European Commission of a uniform cross-sectoral correction factor for all sectors.

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**Action brought on 28 April 2014 — Cyprus v OHIM (XΑΛΛΟΥΜΙ)**

**(Case T-292/14)**

(2014/C 245/28)

*Language of the case: English*

**Parties**

*Applicant:* Republic of Cyprus (represented by: S. Malynicz, Barrister, and V. Marsland, Solicitor)

*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 decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 February 2014 given in Case R 1849/2013-4;
- Order the defendant to pay the costs of proceedings.

**Pleas in law and main arguments**

*Community trade mark concerned:* The word mark 'XΑΛΛΟΥΜΙ' for goods in Class 29 — Community trade mark application No 11 578 473

*Decision of the Examiner:* Rejected the application in its entirety

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

*Pleas in law:* Infringement of Article 7(1)(c) and (b) CTMR.

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**Action brought on 28 April 2014 — Cyprus v OHIM (HALLOUMI)**

**(Case T-293/14)**

(2014/C 245/29)

*Language of the case: English*

**Parties**

*Applicant:* Republic of Cyprus (represented by: S. Malynicz, Barrister, and V. Marsland, Solicitor)

*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 decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 February 2014 given in Case R 1503/2013-4;
- Order the defendant to pay the costs of proceedings.

**Pleas in law and main arguments**

*Community trade mark concerned:* The word mark 'HALLOUMI' for goods in Class 29 — Community trade mark application No 11 570 124

*Decision of the Examiner:* Rejected the application in its entirety

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

*Pleas in law:* Infringement of Article 7(1)(c) and (b) CTMR.

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**Action brought on 1 May 2014 — PKK/Conseil**

**(Case T-316/14)**

(2014/C 245/30)

*Language of the case: English*

**Parties**

*Applicant:* Kurdistan Workers' Party (PKK) (represented by: A. van Eik, T. Buruma and M. Wijngaarden, lawyers)

*Defendant:* Council of the European Union

**Form of order sought**

The applicant claims that the Court should:

- Annul Council Implementing Regulation (EU) No 125/2014 <sup>(1)</sup> insofar as it concerns the PKK (a.k.a. KADEK a.k.a. Kongra-GEL);
- Determine that Council Regulation (EC) No 2580/2001 <sup>(2)</sup> is not applicable to the PKK (a.k.a. KADEK a.k.a. Kongra-GEL);
- In the alternative, determine that a lesser measure than continued placement on the list is warranted;
- Award of costs and interest to the applicant.

**Pleas in law and main arguments**

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

1. First plea in law, alleging that Council Implementing Regulation (EU) No 125/2014 is void insofar as it concerns the PKK and/or Council Regulation (EC) No 2580/2001 is inapplicable due to a failure to observe the law of armed conflict.
2. Second plea in law, alleging that Council Implementing Regulation (EU) No 125/2014 is void insofar as it concerns the PKK since the PKK cannot be qualified as a 'terrorist organisation' as defined in Article 1(3) of Council Common Position 2001/931/CFSP <sup>(3)</sup>.
3. Third plea in law, alleging that Council Implementing Regulation (EU) No 125/2014 is void insofar as it concerns the PKK because no decision by a competent authority, as required by Article 1(4) of Council Common Position 2001/931/CFSP has been taken.

4. Fourth plea in law, alleging that Council Implementing Regulation (EU) No 125/2014 is void insofar as it concerns the PKK as the decision is in part based on information obtained through torture or ill-treatment, thereby failing to respect the fundamental rights, observe the principles and promote the application thereof in accordance with Article 51 of the Charter of Fundamental Rights.
5. Fifth plea in law, alleging that Council Implementing Regulation (EU) No 125/2014 is void insofar as it concerns the PKK since the Council has not conducted any proper review as required by Article 1(6) of Council Common Position 2001/931/CFSP.
6. Sixth plea in law, alleging that Council Implementing Regulation (EU) No 125/2014 is void insofar as it concerns the PKK as the decision does not comply with the requirements of proportionality and subsidiarity.
7. Seventh plea in law, alleging that Council Implementing Regulation (EU) No 125/2014 is void insofar as it concerns the PKK as it does not comply with the obligation to state reasons in conformity with Article 296 TFUE.
8. Eighth plea in law, alleging that Council Implementing Regulation (EU) No 125/2014 is void insofar as it concerns the PKK because it infringes upon the PKK's right of defense and its right to effective judicial protection.

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<sup>(1)</sup> Council Implementing Regulation (EU) No 125/2014 of 10 February 2014 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No 714/2013.

<sup>(2)</sup> Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.

<sup>(3)</sup> Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism.

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**Action brought on 8 May 2014 — Novomatic v OHIM — Granini France (HOT JOKER)**

**(Case T-326/14)**

(2014/C 245/31)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Novomatic AG (Gumpoldskirchen, Austria) (represented by: W. M. Mosing, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Granini France (Macon, France)

**Form of order sought**

The applicant claims that the Court should:

- annul the decision of the Second Board of Appeal of 6 February 2014 in Case R 589/2013-2, with the consequence that the opposition is rejected and the Community trade mark No 9 594 458 is registered as applied for;
- order that the defendant and — in case it intervenes in writing — the other party to the proceedings with OHIM have to bear their own costs and have to compensate the costs incurred by the Plaintiff in the proceeding in front of the General Court and in the appeal proceeding with OHIM

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark containing the word elements 'HOT JOKER' for goods in Classes 9 and 28 — Community trade mark application No 9 594 458

*Proprietor of the mark or sign cited in the opposition proceedings:* Granini France

*Mark or sign cited in opposition:* The figurative mark containing the word elements 'joker +' for goods in Classes 28 and 41

*Decision of the Opposition Division:* The opposition was upheld

*Decision of the Board of Appeal:* The appeal was rejected

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation No 207/2009; infringement of Article 75 ff. of Regulation No 207/2009; infringement of OHIM's duty to exercise its powers in accordance with the general principles of European Union Law.

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**Action brought on 8 May 2014 — Rezon OOD v OHIM — mobile.international GmbH (mobile.de proMotor)**

**(Case T-337/14)**

(2014/C 245/32)

*Language in which the application was lodged: Bulgarian*

**Parties**

*Applicant:* Rezon OOD (Sofia, Bulgaria) (represented by: P. Kanchev and T. Ignatova, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* mobile.international GmbH (Dreilinden, Germany)

**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 19 February 2014 in Case R 950/2013-1;
- grant the applications made to the divisions and boards of appeal of OHIM;
- grant in its entirety the application for a declaration of invalidity of the Community trade mark mobile.international GmbH;
- order reimbursement of the applicant's costs;
- order that experts be appointed to produce a written report on the evidential issues raised in the action.

**Pleas in law and main arguments**

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* Word mark 'mobile.de proMotor' for services in classes 35, 38, 41 and 42 — Community trade mark registration No 4 896 643.

*Proprietor of the Community trade mark:* The other party to the proceedings before the Board of Appeal.

*Applicant for the declaration of invalidity of the Community trade mark:* The applicant, Rezon OOD.

*Grounds for the application for a declaration of invalidity:* Relative ground for invalidity under Article 53(1) in conjunction with Article 8(1)(b) and (c) of Regulation No 207/2009.

*Decision of the Cancellation Division:* Application dismissed.

*Decision of the Board of Appeal:* Appeal dismissed.

*Pleas in law:* Infringement of Article 78(1)(e) of Regulation No 207/2009, in conjunction with Article 76 thereof and with Rule 22(3) of Regulation No 2868/95; infringement of Article 53(1)(a) of Regulation No 207/2009; conflict, in the light of EU enlargement, between the Community trade mark registered subsequently and an earlier national trade mark.

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**Action brought on 21 May 2014 — The Smiley Company v OHIM — The Swatch Group Management Services (HAPPY TIME)**

**(Case T-352/14)**

(2014/C 245/33)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* The Smiley Company SPRL (Bruxelles, Belgium) (represented by: I. Helbig, P. Hansmersmann and S. Rengshausen, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* The Swatch Group Management Services AG (Biel, Switzerland)

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 February 2014 in Case R 1497/2013-1;
- Dismiss the opposition by amendment of the contested decision;
- Order OHIM to pay the applicant's costs before the General Court and order the intervener to pay the applicant's costs before the Board of Appeal.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'HAPPY TIME' for goods and services in Classes 14 and 35 — Community trade mark application No 10 106 813

*Proprietor of the mark or sign cited in the opposition proceedings:* The Swatch Group Management Services AG

*Mark or sign cited in opposition:* International registration protected with effect in the European Union of the word mark 'HAPPY HOURS' for services in Classes 35 and 37

*Decision of the Opposition Division:* The opposition was partially upheld

*Decision of the Board of Appeal:* The appeal was dismissed

*Pleas in law:* Violation of Article 8(1)(b) of Regulation No 207/2009

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**Action brought on 30 May 2014 — Al Naggar v Council**

**(Case T-375/14)**

(2014/C 245/34)

*Language of the case: French*

**Parties**

*Applicant:* Shahinaz Abdel Azizabdel Wahab Al Naggar (Cairo, Egypt) (represented by: J.-F. Bellis, R. Luff, A. Bailleux, Q. Declève, P. Vovan, S. Rowe and A. Yehia, lawyers)

*Defendant:* Council of the European Union

**Form of order sought**

The applicant claims that the Court should:

- declare the action admissible and well-founded;
- annul Decision 2014/153, in so far as it extends until 22 March 2015 the restrictive measures directed against the applicant in Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt;
- order the Council of the European Union to pay the costs of the proceedings.

**Pleas in law and main arguments**

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

1. First plea in law, alleging infringement of Article 1 of Decision 2011/172 <sup>(1)</sup>, in that the applicant herself was not found to be, nor even identified as, responsible for misappropriation of State funds, but is subject to restrictive measures merely because she is the spouse of Mr Ahmed Abdelaziz Ezz ('Mr Ezz').
2. Second plea in law, alleging infringement of Article 6 TEU, read in conjunction with Articles 2 and 3 TEU and Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, in that Decision 2014/153 <sup>(2)</sup> is wrongly based on the irrebuttable presumption that there is no risk of infringement of the applicant's fundamental rights in the proceedings brought against her in Egypt.
3. Third plea in law, alleging infringement of Articles 7, 16 and 17 of the Charter of Fundamental Rights of the European Union, in that Decision 2014/153 creates disproportionate restrictions on the applicant's right to privacy, right to property and freedom to conduct a business.
4. Fourth plea in law, alleging infringement of Articles 41, 47 and 48 of the Charter of Fundamental Rights of the European Union, in that Decision 2014/153 does not provide adequate and sufficient reasons and was adopted in breach of the applicant's right to be heard.
5. Fifth plea in law, alleging a manifest error of assessment, in that (i) the applicant was never subject to any judicial investigation for misappropriation of State funds; (ii) the behaviour of Mr Ezz constitutes normal activities in the course of trade and therefore cannot be regarded as misappropriation of State funds; and (iii) at the time of the adoption of Decision 2014/153, the Council did not take account of the fact that, three years after the adoption of the first measures, Mr Ezz's legal position remains, at the very least, uncertain.

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<sup>(1)</sup> Council Decision 2011/172/CFSP of 21 March 2011, concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2011 L 76, p. 63).

<sup>(2)</sup> Council Decision 2014/153/CFSP of 20 March 2014, amending Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2011 L 85, p. 9).

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**Action brought on 30 May 2014 — Yassin v Council****(Case T-376/14)**

(2014/C 245/35)

*Language of the case: French***Parties**

*Applicant:* Khadiga Ahmed Ahmed Kamel Yassin (Cairo, Egypt) (represented by: J.-F. Bellis, R. Luff, A. Bailleux, Q. Declève, P. Vovan, S. Rowe and A. Yehia, lawyers)

*Defendant:* Council of the European Union

**Form of order sought**

The applicant claims that the Court should:

- declare the action admissible and well-founded;
- annul Decision 2014/153, in so far as it extends until 22 March 2015 the restrictive measures directed against the applicant in Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt;
- order the Council of the European Union to pay the costs of the proceedings.

**Pleas in law and main arguments**

In support of the action, the applicant relies on five pleas in law which are essentially identical or similar to those raised in Case T-375/14 Al Naggar v Council.

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**Action brought on 30 May 2014 — Ezz v Council****(Case T-377/14)**

(2014/C 245/36)

*Language of the case: French***Parties**

*Applicant:* Ahmed Abdelaziz Ezz (Giza, Egypt) (represented by: J.-F. Bellis, R. Luff, A. Bailleux, Q. Declève, P. Vovan, S. Rowe and A. Yehia, lawyers)

*Defendant:* Council of the European Union

**Form of order sought**

The applicant claims that the Court should:

- declare the action admissible and well-founded;
- annul Decision 2014/153, in so far as it extends until 22 March 2015 the restrictive measures directed against the applicant in Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt;
- order the Council of the European Union to pay the costs of the proceedings.

**Pleas in law and main arguments**

In support of the action, the applicant relies on five pleas in law which are essentially identical or similar to those raised in Case T-375/14 Al Naggar v Council.

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**Action brought on 30 May 2014 — Salama v Council****(Case T-378/14)**

(2014/C 245/37)

*Language of the case: French***Parties**

*Applicant:* Abla Mohammed Fawzi Ali Ahmed Salama (Cairo, Egypt) (represented by: J.-F. Bellis, R. Luff, A. Bailleux, Q. Declève, P. Vovan, S. Rowe and A. Yehia, lawyers)

*Defendant:* Council of the European Union

**Form of order sought**

The applicant claims that the Court should:

- declare the action admissible and well-founded;
- annul Decision 2014/153, in so far as it extends until 22 March 2015 the restrictive measures directed against the applicant in Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt;
- order the Council of the European Union to pay the costs of the proceedings.

**Pleas in law and main arguments**

In support of the action, the applicant relies on five pleas in law which are essentially identical or similar to those raised in Case T-375/14 *Al Naggar v Council*.

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**Action brought on 4 June 2014 — Gutser v Commission****(Case T-392/14)**

(2014/C 245/38)

*Language of the case: Spanish***Parties**

*Applicant:* Gutser, SA (Barcelona, Spain) (represented by: J.C. García Muñoz, J.I. Jiménez-Blanco Carrillo de Albornoz and J. Corral García, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order the Commission to pay all the costs incurred in the proceedings.

**Pleas in law and main arguments**

The decision contested in the present proceedings is the same as that contested in Case T-515/13 *Commission v Spain*, relating to the tax regime applicable to certain finance lease agreements, also known as the ‘Spanish Tax Lease System’.

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

1. First plea in law, alleging that the contested decision is vitiated by an infringement of essential procedural requirements and that it infringes Articles 20, 21 and 41(1) of the Charter of Fundamental Rights of the European Union in that it was adopted following an investigation procedure in which there were substantial irregularities.
2. Second plea in law, alleging that the Commission infringed Articles 107 and 108 TFEU in considering that the measures at issue constitute State aid, without having proved their selective nature.
3. Third plea in law, alleging that the Commission infringed Articles 107 and 108 TFEU in considering that the measures at issue constitute State aid, without having proved their effect on inter-Community trade.
4. Fourth plea in law, alleging that the Commission erred in law and infringed Article 107 TFEU in characterising the investors as beneficiaries of the aid. In addition, the decision is not supported by a sufficient statement of reasons.



5. Fifth plea in law, alleging that the Commission erred in law in ordering the recovery of the aid in breach of the principles of legal certainty, the protection of legitimate expectations and equal treatment, as well as Article 14 of Regulation (EC) No 659/1999.

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**Action brought on 4 June 2014 — Ingeperfil v Commission**

**(Case T-393/14)**

(2014/C 245/39)

*Language of the case: Spanish*

**Parties**

*Applicant:* Ingeperfil, SL (Barcelona, Spain) (represented by: J.C. García Muñoz, J.I. Jiménez-Blanco Carrillo de Albornoz and J. Corral García, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order the Commission to pay all the costs incurred in the proceedings.

**Pleas in law and main arguments**

The pleas in law and main arguments are those put forward in Case T-392/14.

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**Action brought on 4 June 2014 — Turon & Ros v Commission**

**(Case T-394/14)**

(2014/C 245/40)

*Language of the case: Spanish*

**Parties**

*Applicant:* Inmobiliaria Turon & Ros, SL (Barcelona, Spain) (represented by: J.C. García Muñoz, J.I. Jiménez-Blanco Carrillo de Albornoz and J. Corral García, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order the Commission to pay all the costs incurred in the proceedings.

**Pleas in law and main arguments**

The pleas in law and main arguments are those put forward in Case T-392/14.

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**Action brought on 6 June 2014 — Sociedad Española Inmuebles y Locales v Commission****(Case T-397/14)**

(2014/C 245/41)

*Language of the case: Spanish***Parties**

*Applicant:* Sociedad Española Inmuebles y Locales, SL (Madrid, Spain) (represented by: J.C. García Muñoz, J.I. Jiménez-Blanco Carrillo de Albornoz and J. Corral García, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order the Commission to pay all the costs incurred in the proceedings.

**Pleas in law and main arguments**

The pleas in law and main arguments are those put forward in Case T-392/14.

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**Action brought on 2 June 2014 — Marcuccio v Court of Justice****(Case T-409/14)**

(2014/C 245/42)

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

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

*Defendant:* Court of Justice of the European Union

**Form of order sought**

- Annul the decision, whatever the form in which it was adopted, by which the defendant rejected the request of 22 January 2014 submitted by the applicant to Court of Justice.
- Order the defendant to pay the applicant the sum of EUR 25 000, or such other greater or lesser sum as the General Court may deem to be fair and equitable, by way of compensation for the harm suffered by the applicant as a result of the unreasonable duration of the legal proceedings brought by the applicant, or by way of an indemnity on account of the unreasonable duration of the proceedings in question.
- Order the defendant to pay all the costs, fees and other expenses incurred in these proceedings.

**Pleas in law and main arguments**

The subject-matter of the present action is the harm which the applicant claims that he suffered as a result of what he claims to be the excessive duration of the proceedings in Case T-236/02 *Marcuccio v Commission*.

In support of the action, the applicant relies on 2 pleas in law.

1. First plea in law, alleging absolute failure to state reasons, including on the ground of absolute failure to carry out a preliminary investigation and breach of the duty of sound administration.
  2. Second plea in law, alleging breach of law and manifest error of assessment.
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# EUROPEAN UNION CIVIL SERVICE TRIBUNAL

**Action brought on 3 June 2014 — ZZ v Commission**

**(Case F-50/14)**

(2014/C 245/43)

*Language of the case: French*

## **Parties**

*Applicant:* ZZ (represented by: S. Orlandi, lawyer)

*Defendant:* European Commission

## **Subject-matter and description of the proceedings**

Application for annulment of the Commission decision refusing to grant an expatriation allowance to the applicant

## **Form of order sought**

The applicant requests the Civil Service Tribunal to:

- annul the decision of 3 October 2013 refusing to grant an expatriation allowance to the applicant;
  - order the Commission to pay the costs.
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