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(Notices)

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COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2017/C 402/01)

Last publication

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These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 5 October 2017 (request for a preliminary ruling from the Vilniaus apygardos teismas — Lithuania) — 'LitSpecMet' UAB v 'Vilniaus lokomotyvų remonto depas' UAB

(Case C-567/15) ([1])

(Reference for a preliminary ruling — Public works contracts, public supply contracts and public service contracts — Directive 2004/18/EC — Article 1(9) — Concept of contracting authority — Company wholly owned by a contracting authority — Transactions internal to the group)

(2017/C 402/02)

Language of the case: Lithuanian

Referring court

Vilniaus apygardos teismas

Parties to the main proceedings

Applicant: 'LitSpecMet' UAB

Defendant: 'Vilniaus lokomotyvų remonto depas' UAB

Intervening party: 'Plienmetas' UAB

Operative part of the judgment

The second subparagraph of Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, as amended by Commission Regulation (EU) No 1251/2011 of 30 November 2011, must be interpreted as meaning that a company which, on the one hand, is wholly owned by a contracting authority whose activity consists of meeting needs in the general interest and which, on the other, carries out both transactions for that contracting authority and transactions on the competitive market must be classified as a 'body governed by public law' within the meaning of that provision, provided that the activities of that company are necessary for the contracting authority to exercise its own activity and, in order to meet needs in the general interest, that company is able to be guided by non-economic considerations, which it is for the referring court to ascertain. The fact that the value of the internal transactions may in future represent less than 90 % or an insignificant part of the overall turnover of the company is irrelevant in that regard.

([1]) OJ C 27, 25.1.2016.

Judgment of the Court (Second Chamber) of 27 September 2017 (requests for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — Nintendo Co. Ltd v BigBen Interactive GmbH, BigBen Interactive SA

(Joined Cases C-24/16 and C-25/16) ([1])

(References for a preliminary ruling — Intellectual property — Regulation (EC) No 6/2002 — Article 20(1)(c), Article 79(1) and Articles 82, 83, 88 and 89 — Action for infringement — Limitation of the rights conferred by the Community design — Concept of 'citations' — Regulation (EC) No 44/2001 — Article 6(1) — Jurisdiction in respect of the co-defendant domiciled outside the Member State of the forum — Territorial scope of the jurisdiction of the Community design courts — Regulation (EC) No 864/2007 — Article 8(2) — Law applicable to claims seeking the adoption of orders relating to sanctions and other measures)

(2017/C 402/03)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Nintendo Co. Ltd

Defendants: BigBen Interactive GmbH, BigBen Interactive SA

Operative part of the judgment

1. *Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, read in conjunction with Article 6(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, must be interpreted as meaning that in circumstances such as those in the main proceedings where the international jurisdiction of a Community design court seised of an action for infringement is based, with regard to one defendant, on Article 82(1) of Regulation No 6/2002 and, with regard to a second defendant established in another Member State, on that Article 6(1) read in conjunction with Article 79(1) of Regulation No 6/2002, because the second defendant makes and supplies to the first defendant the goods that the latter sells, that court may, on the applicant's request, adopt orders in respect of the second defendant concerning measures falling under Article 89(1) and Article 88(2) of Regulation No 6/2002 also covering the second defendant's conduct other than that relating to the abovementioned supply chain and with a scope which extends throughout the European Union;*

2. *Article 20(1)(c) of Regulation No 6/2002 must be interpreted as meaning that a third party which, without the consent of the holder of the rights conferred by a Community design, uses, including via its website, images of goods corresponding to such designs when lawfully offering for sale goods intended to be used as accessories to the specific goods of the holder of the rights conferred by those designs, in order to explain or demonstrate the joint use of the goods thus offered for sale and the specific goods of the holder of those rights, carries out an act of reproduction for the purpose of making 'citations' within the meaning of Article 20(1)(c), such an act thus being authorised under that provision provided that it fulfils the cumulative conditions laid down therein, which is for the national court to verify;*

3. *Article 8(2) of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ('Rome II') must be interpreted as meaning that the 'country in which the act of infringement was committed' within the meaning of that provision refers to the country where the event giving rise to the damage occurred. Where the same defendant is accused of various acts of infringement in various Member States, the correct approach for identifying the event giving rise to the damage is not to refer to each alleged act of infringement, but to make an overall assessment of that defendant's conduct in order to determine the place where the initial act of infringement at the origin of that conduct was committed or threatened by it.*

(1) OJ C 145, 25.4.2016.

Judgment of the Court (Second Chamber) of 27 September 2017 (request for a preliminary ruling from the Najvyšší súd Slovenskej republiky — Slovakia) — Peter Puškár v Finančné riaditeľstvo Slovenskej republiky, Kriminálny úrad finančnej správy

(Case C-73/16) (1)

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Articles 7, 8 and 47 — Directive 95/46/EC — Articles 1, 7 and 13 — Processing of personal data — Article 4(3) TEU — Drawing up of a list of personal data — Subject matter — Tax collection — Fight against tax fraud — Judicial review — Protection of fundamental rights and freedoms — Legal action dependent on a requirement of a prior administrative complaint — Whether that list is permissible as evidence — Rules on the lawfulness of the processing of personal data — Performance of a task carried out in the public interest by the controller)

(2017/C 402/04)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Applicant: Peter Puškár

Defendants: Finančné riaditeľstvo Slovenskej republiky, Kriminálny úrad finančnej správy

Operative part of the judgment

1) *Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that it does not preclude national legislation, which makes the exercise of a judicial remedy by a person stating that his right to protection of personal data guaranteed by Directive 95/46/EC 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, has been infringed, subject to the prior exhaustion of the remedies available to him before the national administrative authorities, provided that the practical arrangements for the exercise of such remedies do not disproportionately affect the right to an effective remedy before a court referred to in that article. It is important, in particular, that the prior exhaustion of the available remedies before the national administrative authorities does not lead to a substantial delay in bringing a legal action, that it involves the suspension of the limitation period of the rights concerned and that it does not involve excessive costs.*

2) *Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as precluding that a national court rejects, as evidence of an infringement of the protection of personal data conferred by Directive 95/46, a list, such as the contested list, submitted by the data subject and containing personal data relating to him, if that person had obtained that list without the consent, legally required, of the person responsible for processing that data, unless such rejection is laid down by national legislation and respects both the essential content of the right to an effective remedy and the principle of proportionality.*

3) *Article 7(e) Directive 95/46 must be interpreted as not precluding the processing of personal data by the authorities of a Member State for the purpose of collecting tax and combating tax fraud such as that effected by drawing up of a list of persons such as that at issue in the main proceedings, without the consent of the data subjects, provided that, first, those authorities were invested by the national legislation with tasks carried out in the public interest within the meaning of that article, that the drawing-up of that list and the inclusion on it of the names of the data subjects in fact be adequate and necessary for the attainment of the objectives pursued and that there be sufficient indications to assume that the data subjects are rightly included in that list and, second, that all of the conditions for the lawfulness of that processing of personal data imposed by Directive 95/46 be satisfied.*

(1) OJ C 165, 10.5.2016.

Judgment of the Court (First Chamber) of 4 October 2017 (request for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division) — United Kingdom) — Commissioners for Her Majesty's Revenue & Customs v Mercedes-Benz Financial Services UK Ltd

(Case C-164/16) (1)

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Article 14(2)(b) — Supply of goods — Motor vehicles — Finance lease with an option to purchase)

(2017/C 402/05)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicant: Commissioners for Her Majesty's Revenue & Customs

Defendant: Mercedes-Benz Financial Services UK Ltd

Operative part of the judgment

The words 'contract for hire which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment', used in Article 14(2)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, must be interpreted as applying to a leasing contract with an option to purchase if it can be inferred from the financial terms of the contract that exercising the option appears to be the only economically rational choice that the lessee will be able to make at the appropriate time if the contract is performed for its full term, which it is for the national court to ascertain.

(1) OJ C 191, 30.5.2016.

Judgment of the Court (First Chamber) of 4 October 2017 (request for a preliminary ruling from the Corte suprema di cassazione — Italy) — Agenzia delle Entrate v Federal Express Europe Inc.

(Case C-273/16) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Sixth Directive 77/388/EEC — Directive 2006/112/EC — Exemption from VAT — Article 86(1)(b) and Article 144 — Relief from import duties for goods of negligible value or of a non-commercial character — Exemption of the supply of services relating to the importation of goods — National legislation levying VAT on the transport costs of documents and goods of negligible value despite their being ancillary to non-taxable goods)

(2017/C 402/06)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Agenzia delle Entrate

Defendant: Federal Express Europe Inc.

Operative part of the judgment

Article 144 in conjunction with Article 86(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation such as that at issue in the main proceedings which requires, for the application of an exemption from value added tax for ancillary services, including transport services, not only that their value is included in the taxable amount, but also that value added tax has in fact been charged on those services at the customs stage at the time of importation.

([1]) OJ C 343, 19.9.2016.

Judgment of the Court (Second Chamber) of 5 October 2017 (request for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — Hanssen Beleggingen BV v Tanja Prast-Knipping

(Case C-341/16) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil and commercial matters — Regulation (EC) No 44/2001 — Jurisdiction — Article 2(1) — Jurisdiction of the courts of the place where the defendant is domiciled — Article 22(4) — Exclusive jurisdiction in proceedings concerned with the registration or validity of intellectual property rights — Proceedings to determine whether a person was correctly registered as the proprietor of a trade mark)

(2017/C 402/07)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Hanssen Beleggingen BV

Defendant: Tanja Prast-Knipping

Operative part of the judgment

Article 22(4) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not applying to proceedings to determine whether a person was correctly registered as the proprietor of a trade mark.

[1] OJ C 326, 5.9.2016.

Judgment of the Court (Ninth Chamber) of 5 October 2017 — Wolf Oil Corp. v European Union Intellectual Property Office (EUIPO), SCT Lubricants UAB

(Case C-437/16 P) [1]

(Appeal — EU trade mark — Opposition proceedings — International registration designating the European Union — Word mark CHEMPIOIL — Earlier figurative mark CHAMPION — Opposition dismissed)

(2017/C 402/08)

Language of the case: English

Parties

Appellant: Wolf Oil Corp. (represented by: P. Maeyaert and J. Muyldermans, advocaten)

Other party to the proceedings: European Union Intellectual Property Office (represented by: L. Rampini, acting as Agent), SCT Lubricants UAB (represented by: S. Labesius, Rechtsanwalt)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Wolf Oil Corp. to pay the costs.*

[1] OJ C 428, 21.11.2016.

Appeal brought on 4 July 2017 by Krassimira Georgieva Mladenova against the order of the General Court (Eighth Chamber) delivered on 24 April 2017 in Case T-814/16: Krassimira Georgieva Mladenova v European Parliament

(Case C-405/17 P)

(2017/C 402/09)

Language of the case: English

Parties

Appellant: Krassimira Georgieva Mladenova

Other party to the proceedings: European Parliament

By order of 10 October 2017 the Court of Justice (Tenth Chamber) held that the appeal was inadmissible.

Request for a preliminary ruling from the Landgericht Tübingen (Germany) lodged on 11 August 2017 — Südwestrundfunk v Tilo Rittinger, Patric Wolter, Harald Zastera, Dagmar Fahner, Layla Sofan, Marc Schulte

(Case C-492/17)

(2017/C 402/10)

Language of the case: German

Referring court

Landgericht Tübingen

Parties to the main proceedings

Creditor and appellant/respondent: Südwestrundfunk

Debtors and respondents/appellants: Tilo Rittinger, Patric Wolter, Harald Zastera, Dagmar Fahner, Layla Sofan, Marc Schulte

Questions referred

1. Is the national Baden-Württembergisches Gesetz vom 18.10.2011 zur Geltung des Rundfunkbeitragsstaatsvertrags (Baden-Württemberg law of 18 October 2011 on the application of the interstate treaty on the broadcasting contribution fee, 'RdFunkBeitrStVtrBW') of 17 December 2010, last amended by Article 4 of the Neunzehnter Rundfunkänderungsstaatsvertrag vom 3. Dezember 2015 (nineteenth treaty amending the interstate broadcasting treaty of 3 December 2015) (Law of 23 February 2016 — GBl. pp. 126, 129) incompatible with EU law because the contribution fee unconditionally levied since 1 January 2013 in principle from every adult living in the German *Land* of Baden-Württemberg to finance the public service broadcasters SWR (Südwestrundfunk) and ZDF (Zweites Deutsches Fernsehen) represents preferential aid that infringes EU law for the exclusive benefit of these public service broadcasting bodies compared to private broadcasting organisations? Are Articles 107 and 108 TFEU to be interpreted as meaning that the law on the broadcasting contribution fee should have been approved by the Commission and is invalid without that approval?

2. Are Articles 107 and 108 TFEU to be interpreted as encompassing the provision laid down in the national RdFunkBeitrStVtrBW law under which a contribution fee for the exclusive benefit of official/public service broadcasters is unconditionally levied in principle from every adult living in Baden-Württemberg, because this contribution fee contains preferential aid that infringes EU law with the effect that broadcasters from other EU countries are excluded from certain technology, as the contribution fees are used to set up a competing transmission method (DVB-T2 monopoly) whose use by foreign broadcasters is not provided for? Are Articles 107 and 108 TFEU to be interpreted as encompassing not only direct financial aid but also other privileges with economic relevance (right to issue enforcement instruments, authority to act both as an economic undertaking and also as an official body, better position in the calculation of debts)?

3. Is it compatible with the principle of equal treatment and the prohibition of preferential aid if, under a national Baden-Württemberg law, a German television broadcaster which is organised under public law and takes the form of a public body but which at the same time also competes with private broadcasters for advertising is put in a privileged position compared to them, in that, unlike its private competitors, it does not have to go through the ordinary courts to obtain an enforcement instrument for its claims against viewers before being able to enforce these claims, but is itself permitted to create such an instrument equally entitling it to enforcement without the need for a court?

4. Is it compatible with Article 10 of the European Convention on Human Rights/Article 4 of the Charter of Fundamental Rights (freedom of information) that a Member State provides in a national Baden-Württemberg law that a television broadcaster that takes the form of a public body is entitled to demand a contribution fee, on pain of an administrative fine, to finance none other than that broadcaster from every adult living within the broadcasting territory, irrespective of whether an individual even possesses a reception device or uses only other broadcasters, namely foreign and private ones?

5. Is the national RdFunkBeitrStVtrBW law, particularly Paragraphs 2 and 3, compatible with the principle of equal treatment and the prohibition of discrimination in EU law if the contribution fee payable unconditionally by every resident for the purpose of financing a public service television broadcaster burdens a single parent much more per head than a member of a shared household? Is Directive 2004/113/EC [1] to be interpreted as also encompassing the contribution fee at issue and as meaning that an indirect disadvantage is sufficient when it is 90 % women who are more heavily burdened in the actual circumstances?

6. Is the national RdFunkBeitrStVtrBW law, particularly Paragraphs 2 and 3, compatible with the principle of equal treatment and the prohibition of discrimination in EU law if the contribution fee payable unconditionally by every resident for the purpose of financing a public service television broadcaster is twice as high for persons who need a second home for work reasons than for other workers?

7. Is the national RdFunkBeitrStVtrBW law, particularly Paragraphs 2 and 3, compatible with the principle of equal treatment in EU law, the prohibition of discrimination in EU law and the freedom of establishment in EU law if the contribution fee payable unconditionally by every resident for the purpose of financing a public service television broadcaster is organised as regards persons in such a way that, where the reception is the same, a German living immediately before the border with a neighbouring EU State owes the contribution fee solely depending on the location of his place of residence, but a German living immediately beyond the border does not owe the contribution fee, just as a foreign EU citizen who for work reasons has to settle immediately beyond an internal EU border is charged the contribution fee while an EU citizen immediately before the border is not, even if neither is interested in receiving the German broadcaster?

(1) Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ 2004 L 373, p. 37.

Request for a preliminary ruling from the Bundesverfassungsgericht (Germany) lodged on 15 August 2017 — Heinrich Weiss and Others

(Case C-493/17)

(2017/C 402/11)

Language of the case: German

Referring court

Bundesverfassungsgericht

Parties to the main proceedings

Applicants: Heinrich Weiss, Jürgen Heraeus, Patrick Adenauer, Bernd Lucke, Hans-Olaf Henkel, Joachim Starbatty, Bernd Kölmel, Ulrike Trebesius, Peter Gauweiler, Johann Heinrich von Stein, Gunnar Heinsohn, Otto Michels, Reinhold von Eben-Worlée, Michael Göde, Dagmar Metzger, Karl-Heinz Hauptmann, Stefan Städter, Markus C. Kerber and Others

Defendants: Federal Government, European Central Bank, Deutsche Bundesbank

Questions referred

1. Does Decision (EU) 2015/774 of the European Central Bank of 4 March 2015 on a secondary markets public sector asset purchase programme (ECB/2015/10) [1], as amended by Decision (EU) 2015/2101 of the European Central Bank of 5 November 2015 amending Decision (EU) 2015/774 on a secondary markets public sector asset purchase programme (ECB/2015/33) [2], Decision (EU) 2016/702 of the European Central Bank of 18 April 2016 amending Decision (EU) 2015/774 on a secondary markets public sector asset purchase programme (ECB/2016/8) [3] and Decision (EU) 2016/1041 of the European Central Bank of 22 June 2016 on the eligibility of marketable debt instruments issued or fully guaranteed by the Hellenic Republic and repealing Decision (EU) 2015/300 (ECB/2016/18) [4], or the method of its implementation, infringe Article 123(1) of the Treaty on the Functioning of the European Union?

Does it infringe Article 123(1) of the Treaty on the Functioning of the European Union in particular if in the course of the public sector asset purchase programme (PSPP)

a) details of the purchases are communicated in a way that creates de facto certainty on the markets that the Eurosystem will purchase part of the bonds to be issued by the Member States?

b) even after the event no details are given about compliance with minimum periods between the issue of a debt instrument on the primary market and its purchase on the secondary market, with the result that a review by the courts is not possible in that regard?

c) all bonds purchased are not resold but held until maturity and thus withdrawn from the market?

d) the Eurosystem purchases marketable debt instruments with a negative yield at maturity?

2. Does the Decision referred to in 1 above then infringe Article 123 TFEU in any event if, in view of changes in conditions on the finance markets, in particular as a result of a shortage of bonds available for purchase, its continued implementation requires a continual loosening of the originally agreed purchase rules and the restrictions laid down in the case-law of the Court of Justice for a bond purchase programme, such as the PSPP represents, lose their effect?

3. Does the current version of Decision (EU) 2015/774 of the European Central Bank of 4 March 2015, referred to in 1 above, infringe Article 119 and Article 127(1) and (2) of the Treaty on the Functioning of the European Union and Articles 17 to 24 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank because it exceeds the monetary policy mandate of the European Central Bank laid down in those provisions and for that reason encroaches upon the competence of the Member States?

Is the mandate of the European Central Bank exceeded in particular as a result of the fact that

a) on the basis of the volume of the PSPP, which amounted to EUR 1 534,8 billion on 12 May 2017, the Decision referred to in 1 above materially influences the refinancing terms of the Member States?

b) in view of the improvement in the refinancing terms of the Member States referred to in (a) above and their effect on the commercial banks, the Decision referred to in 1 above has not only indirect economic policy consequences but its objectively ascertainable effects suggest that an economic policy aim of the programme is at least of equal priority as the monetary policy aim?

c) on account of its powerful economic policy effects, the Decision referred to in 1 above infringes the principle of proportionality?

d) in the absence of a specific statement of reasons during the period of more than two years of implementation, it is not possible to examine whether the Decision referred to in 1 above is still necessary and proportionate?

4. Does the Decision referred to in 1 above infringe Article 119 and Article 127(1) and (2) TFEU and Articles 17 to 24 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank in any event because its volume and implementation period of more than two years and the resulting economic policy effects give grounds for a different view of the need for and proportionality of the PSPP and consequently, from a certain point in time, it exceeds the economic policy mandate of the European Central Bank?

5. Does the unlimited sharing of risks between the national central banks of the Eurosystem that may be provided for under the Decision referred to in 1 above, in the event of the non-repayment of bonds of the central governments and of equivalent issuers, infringe Article 123 and Article 125 of the Treaty on the Functioning of the European Union and Article 4(2) of the Treaty on European Union, if as a result it may be necessary for national central banks to be recapitalised using budget funds?

(1) OJ 2015 L 121, p. 20.
(2) OJ 2015 L 303, p. 106.
(3) OJ 2016 L 121, p. 24.
(4) OJ 2016 L 169, p. 14.

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 21 August 2017 — Lintner Györgyné v UniCredit Bank Hungary

(Case C-511/17)

(2017/C 402/12)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Lintner Györgyné

Defendant: UniCredit Bank Hungary

Questions referred

1. Must Article 6(1) of the Unfair Terms Directive (1) — having regard also to the national legislation requiring legal representation — be interpreted as meaning that it is necessary to examine each of the clauses of a contract individually in the light of whether it may be regarded as unfair, irrespective of whether an examination of all the terms of the contract is actually necessary in order to rule on the claim made in the action?

2. If not, is it necessary, contrary to the suggestion in question 1, to interpret Article 6(1) of the Unfair Terms Directive as meaning that, in order to find that the clause on which the claim is based is unfair, all the other terms of the contract must also be examined?

3. If the answer to question 2 is affirmative, does that mean that it is in order to be able to establish that the clause at issue is unfair that it is necessary to examine the entire contract, that is to say that it is not necessary to examine each part of the contract individually for unfairness, independently of the clause disputed in the action?

(1) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Bundespatentgericht (Germany) lodged on 5 September 2017 — LN

(Case C-527/17)

(2017/C 402/13)

Language of the case: German

Referring court

Bundespatentgericht

Parties to the main proceedings

Applicant: LN

Defendant: Deutsches Patent- und Markenamt

Question referred

Must Article 2 of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products ([1]) be interpreted as meaning that, for the purposes of that regulation, an authorisation under Directive 93/42/EEC ([2]) for a combined medical device and medicinal product within the meaning of Article 1(4) of Directive 93/42/EEC is to be treated as a valid marketing authorisation under Directive 2001/83/EC ([3]), where, as part of the authorisation procedure laid down in Annex I, Section 7.4, first paragraph, to Directive 93/42/EEC, the quality, safety and usefulness of the medicinal product component has been verified by the medicinal products authority of a Member State in accordance with Directive 2001/83/EC?

([1]) OJ L 152, p. 1.
([2]) Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (OJ 1993 L 169, p. 1).
([3]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

Request for a preliminary ruling from the Landgericht Hamburg (Germany) lodged on 11 September 2017 — Wolfgang Wirth and Others v Thomson Airways Ltd.

(Case C-532/17)

(2017/C 402/14)

Language of the case: German

Referring court

Landgericht Hamburg

Parties to the main proceedings

Applicants: Wolfgang Wirth, Theodor Mülder, Ruth Mülder, Gisela Wirth

Defendant: Thomson Airways Ltd.

Question referred

Is the concept of 'operating air carrier' in Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 ([1]), to be interpreted as meaning that an air carrier which leases to another air carrier an aircraft, including crew, for a contractually-stipulated number of flights under a so-called wet lease, but which does not bear the principal operational responsibility for the individual flights, and where it is stated in the passengers' booking confirmation that the flight is 'operated by …' that very carrier, is the operating air carrier within the meaning of that regulation?

([1]) OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 15 September 2017 — Bundesrepublik Deutschland v Adel Hamed

(Case C-540/17)

(2017/C 402/15)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant on a point of law: Bundesrepublik Deutschland

Respondent in the appeal on a point of law: Adel Hamed

Questions referred

1. Does EU law preclude a Member State (in this case, Germany) from rejecting an application for international protection as inadmissible on the ground that refugee status has been granted in another Member State (in this case, Bulgaria), in implementation of the power under Article 33(2)(a) of Directive 2013/32/EU ([1]) or under the rule in Article 25(2)(a) of Directive 2005/85/EC ([2]) that preceded it, if the form which the international protection takes, and, more specifically, the living conditions of persons qualifying as refugees, in the other Member State which has already granted the applicant international protection (in this case, Bulgaria),

   (a) does not meet the requirements of Article 20 et seq. of Directive 2011/95/EU ([3]) and/or

   (b) infringes Article 4 of the Charter of Fundamental Rights of the European Union and/or Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms?

2. If Question 1(a) or (b) is to be answered in the affirmative, is this also the case where

   (a) persons qualifying as refugees in the Member State in which they so qualify (in this case, Bulgaria) do not receive any subsistence benefits at all, or those which they do receive are very limited by comparison with those available in other Member States, but they are to that extent not treated any differently from nationals of that Member State,

   (b) persons qualifying as refugees are, admittedly, formally treated in the same way as nationals of that State with regard to the conditions relating to subsistence but in fact have greater difficulty in accessing the corresponding benefits and there is no integration programme appropriately tailored and addressing the special needs of the persons concerned such as to ensure *de facto* equivalent treatment to that of nationals of that State?

([1]) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).
([2]) Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13).
([3]) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 15 September 2017 — Bundesrepublik Deutschland v Amar Omar

(Case C-541/17)

(2017/C 402/16)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant on a point of law: Bundesrepublik Deutschland

Respondent in the appeal on a point of law: Amar Omar

Questions referred

1. Does EU law preclude a Member State (in this case, Germany) from rejecting an application for international protection as inadmissible on the ground that refugee status has been granted in another Member State (in this case, Bulgaria), in implementation of the power under Article 33(2)(a) of Directive 2013/32/EU ([1]) or under the rule in Article 25(2)(a) of Directive 2005/85/EC ([2]) that preceded it, if the form which the international protection takes, and, more specifically, the living conditions of persons qualifying as refugees, in the other Member State which has already granted the applicant international protection (in this case, Bulgaria),

   (a) does not meet the requirements of Article 20 et seq. of Directive 2011/95/EU ([3]) and/or

   (b) infringes Article 4 of the Charter of Fundamental Rights of the European Union and/or Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms?

2. If Question 1(a) or (b) is to be answered in the affirmative, is this also the case where

   (a) persons qualifying as refugees in the Member State in which they so qualify (in this case, Bulgaria) do not receive any subsistence benefits at all, or those which they do receive are very limited by comparison with those available in other Member States, but they are to that extent not treated any differently from nationals of that Member State,

   (b) persons qualifying as refugees are, admittedly, formally treated in the same way as nationals of that State with regard to the conditions relating to subsistence but in fact have greater difficulty in accessing the corresponding benefits and there is no integration programme appropriately tailored and addressing the special needs of the persons concerned such as to ensure *de facto* equivalent treatment to that of nationals of that State?

([1]) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

([2]) Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13).

([3]) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

Appeal brought on 18 September 2017 by BPC Lux 2 Sàrl, and Others against the order of the General Court (Second Chamber) delivered on 19 July 2017 in Case T-812/14: BPC Lux 2 Sàrl and Others v European Commission

(Case C-544/17 P)

(2017/C 402/17)

Language of the case: English

Parties

Appellants: BPC Lux 2 Sàrl and Others (represented by: K. Bacon QC, B. Woogar, Barristers, J. Webber, M. Steenson, Solicitors)

Other parties to the proceedings: European Commission, Portuguese Republic

Form of order sought

The appellants claim that the Court should:

— set aside the order of the General Court;

— remit the case to the General Court for a further hearing on the merits; and

— order the Commission to pay the appellants' costs.

Pleas in law and main arguments

This is an appeal against the order of the General Court dated 19 July 2017 in Case T-812/14 BPC Lux 2 Sàrl v European Commission EU:T:2017:560 ('the order under appeal'), by which the General Court dismissed as inadmissible the appellants' action seeking annulment of the Commission's Decision C(2014) 5682 on State Aid SA.39250 Resolution of Banco Espírito Santo ('the contested decision').

In the order under appeal, the General Court held of its own motion that the appellants do not have an interest in annulment, and as such that their application is inadmissible. The appellants now appeal to the Court of Justice, on the single ground that the General Court erred in law and/or manifestly distorted the evidence before it.

Specifically, the General Court erred in finding that the annulment of the contested decision could not have any effect in the domestic proceedings because they concerned questions of national law while these proceedings concern issues of EU law. In fact, as set out further below, the appellants had provided evidence from their Portuguese lawyer, uncontradicted by the Commission or the Portuguese Republic, that the annulment of the contested decision would substantially increase the likelihood of success in their domestic judicial review application, entitling them either to annulment of the resolution of BES or to claim damages. In reaching the contrary conclusion, and thereby denying the Portuguese courts the opportunity to consider the point for themselves, the General Court impermissibly substituted its own assessment of the interpretation of national law for that of the Portuguese courts, and/or manifestly distorted the evidence before it.

Request for a preliminary ruling from the Svea hovrätt (Sweden) lodged on 21 September 2017 — Rebecka Jonsson v Société du Journal L'Est Républicain

(Case C-554/17)

(2017/C 402/18)

Language of the case: Swedish

Referring court

Svea hovrätt

Parties to the main proceedings

Applicant: Rebecka Jonsson

Defendant: Société du Journal L'Est Républicain

Questions referred

1. Does Article 16 of Regulation (EC) No 861/2007 ([1]) of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure constitute an obstacle to the application of a national provision under which the costs of proceedings may be set off or adjusted depending on whether the parties were successful in part and unsuccessful in part, where there are a number of claims in the proceedings or where a claim is upheld only in part?

2. If the answer to the first question is in the affirmative, how is the expression 'unsuccessful party' in Article 16 of the regulation to be interpreted?

([1]) OJ 2007 L 199, p. 1.

Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 22 September 2017 — 2M-Locatel A/S v Skatteministeriet

(Case C-555/17)

(2017/C 402/19)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: 2M-Locatel A/S

Defendant: Skatteministeriet

Question referred

Is the Combined Nomenclature in the Common Customs Tariff, as set out in Annex 1 to Commission Regulation (EC) No 1549/2006 of 17 October 2006 ([1]) ([2])

(i) the subdivision '—Video tuners' of heading 8528,

(ii) subheading 8528 71 13 and

(iii) subheading 8528 71 90

to be interpreted as meaning that *a product* matching the product description in subheading 8528 71 13 and capable of receiving, decoding and processing Live TV television signals transmitted via internet technology, but not capable of receiving, decoding and processing Live TV television signals transmitted via antenna, cable TV or satellite, *is to be classified* under subheading 8528 71 13, subheading 8528 71 90 or under a third subheading?

([1]) OJ 2006 L 301, p. 1. amending Annex I to Council Regulation (EEC) No 2658/87

([2]) OJ 1987 L 256, p. 1. on the tariff and statistical nomenclature and on the Common Customs Tariff,

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 22 September 2017 — Y.Z. and Others, Staatssecretaris van Veiligheid en Justitie

(Case C-557/17)

(2017/C 402/20)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellants: Y.Z., Z.Z. and Y.Y., Staatssecretaris van Veiligheid en Justitie

Questions referred

1. Must Article 16(2)(a) of Council Directive 2003/86/EC ([1]) of 22 September 2003 on the right to family reunification … be interpreted as precluding the withdrawal of a residence permit granted for the purpose of family reunification in the case where the acquisition of that residence permit was based on fraudulent information but the family member was unaware of the fraudulent nature of that information?

2. Must Article 9(1)(a) of Council Directive 2003/109/EC ([2]) of 25 November 2003 concerning the status of third-country nationals who are long-term residents … be interpreted as precluding the withdrawal of long-term resident status in the case where the acquisition of that status was based on fraudulent information but the long-term resident was unaware of the fraudulent nature of that information?

([1]) OJ 2003 L 251, p. 12.
([2]) OJ 2004 L 16, p. 44.

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 26 September 2017 — 'Bene Factum' UAB v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

(Case C-567/17)

(2017/C 402/21)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Appellant: 'Bene Factum' UAB

Other party: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Questions referred

1. Is Article 27(1)(b) of Council Directive 92/83/EEC ([1]) of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages to be interpreted as applying to any products not for human consumption in accordance with their basic (direct) intended use (consumption), irrespective of the fact that some individuals consume cosmetics and personal care products such as those at issue in the present case as alcoholic beverages for intoxication purposes?

2. Is the answer to the first question affected by the fact that the person who imported the products at issue from a Member State knew that the products containing denatured ethyl alcohol, manufactured on his order and supplied (sold) to final consumers in Lithuania by other persons, are consumed by certain individuals as alcoholic beverages and he therefore manufactured and labelled those products taking into account that fact, having the objective of selling as many of them as possible?

[1] OJ 1992 L 316, p. 21.

Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 28 September 2017 — Openbaar Ministerie v Samet Ardic

(Case C-571/17)

(2017/C 402/22)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicant: Openbaar Ministerie

Defendant: Samet Ardic

Question referred

If the requested person has been found guilty in final proceedings conducted in his presence and has had imposed on him a custodial sentence, the execution of which has been suspended subject to certain conditions, do subsequent proceedings in which the court, in the absence of the requested person, orders that suspension to be revoked on the ground of non-compliance with conditions and evasion of the supervision and guidance of a probation officer constitute a 'trial resulting in the decision' as referred to in Article 4a of Framework Decision 2002/584/JHA ([1])?

[1] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

Action brought on 12 October 2017 — Republic of Austria v Federal Republic of Germany

(Case C-591/17)

(2017/C 402/23)

Language of the case: German

Parties

Applicant: Republic of Austria (represented by: G. Hesse, acting as Agent)

Defendant: Federal Republic of Germany

Form of order sought

The applicant claims that the Court should:

— declare that, by introducing the charge for passenger cars through the Law on infrastructure charges of 8 June 2015 (BGBI. I, p. 904), as amended by Article 1 of the Law of 18 May 2017 (BGBI. I, p. 1218), in conjunction with the tax relief for owners of German-registered passenger cars introduced in the Law on motor vehicle tax, as amended by notice

of 26 September 2002 (BGBI. I, p. 3818), through the second amending Law on transport tax of 8 June 2015 (BGBI. I, p. 901) and most recently amended by the Law amending the second amending Law on transport tax of 6 June 2017 (BGBI. I, p. 1493), the Federal Republic of Germany has infringed Articles 18 TFEU, 34 TFEU, 56 TFEU and 92 TFEU;

— order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

1. **Indirect discrimination on grounds of nationality through the compensation of the infrastructure charges by means of tax relief for owners of cars registered in Germany**

The Law on infrastructure charges requires all users of the German motorway network to pay an infrastructure charge graded according to the emissions class of the vehicle. However, road users residing in Germany are reimbursed at least an equal amount through tax relief enshrined in the Law on motor vehicle tax. The connection in timing and content between the infrastructure charge and motor vehicle tax relief in (at least) an equal amount means that, in effect, only foreign road users are subject to the infrastructure charge.

The Republic of Austria takes the view that those two measures, due to their inseparability in timing and content, must be judged together under EU law. The legislation gives rise to indirect discrimination on grounds of nationality which, under Article 18 TFEU, requires justification. In the Republic of Austria's view, there is no such justification for discrimination against foreign road users. The legislation therefore infringes Article 18 TFEU.

2. **Indirect discrimination on grounds of nationality through the design of the infrastructure charge**

A difference in treatment of national and foreign road users also lies in the fact that monitoring of the obligation to pay and sanctions on account of unpaid or incorrectly paid infrastructure charges apply predominantly to foreign drivers, because German drivers are automatically invoiced the infrastructure charge.

3. **Infringement of Articles 34 TFEU and 56 TFEU**

In the Republic of Austria's view, there is, moreover, an infringement of the free movement of goods and the freedom to provide services, in so far as the legislation affects the cross-border supply of goods with small motor vehicles below 3,5 t weight that are subject to the infrastructure charge and the provision of services by non-residents or the provision of services to non-residents. It must therefore — in addition to the discrimination already indicated — also be classified as an inadmissible restriction on those fundamental freedoms which cannot be justified.

4. **Infringement of Article 92 TFEU**

Lastly, the legislation infringes Article 92 TFEU, in so far as it extends to commercial bus transportation or the transportation of goods with motor vehicles below 3,5 t. Article 92 TFEU does not provide for a possibility of justification, with the result that the very existence of discrimination under Article 92 TFEU renders the legislation incompatible with EU law.

Order of the President of the Court of 29 August 2017 — European Commission v Republic of Austria

(Case C-347/15) ([1])

(2017/C 402/24)

Language of the case: German

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 279, 24.8.2015.

Order of the President of the Court of 14 September 2017 (request for a preliminary ruling from the Cour d'appel de Mons — Belgium) — Cabinet d'Orthopédie Stainier SPRL v Belgium State

(Case C-592/16) ([1])

(2017/C 402/25)

Language of the case: French

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 38, 6.2.2017.

Order of the President of the Court of 11 September 2017 — European Commission v Republic of Bulgaria

(Case C-130/17) ([1])

(2017/C 402/26)

Language of the case: Bulgarian

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 144, 8.5.2017.

GENERAL COURT

Judgment of the General Court of 10 October 2017 — Klement v OHIM — Bullerjan (Form of an oven)

(Case T-211/14 RENV) ([1])

(European Union trade mark — Revocation proceedings — Three-dimensional EU trade mark — Form of an oven — Genuine use of a mark — Point (a) of the second subparagraph of Article 15(1), and Article 51 (1)(a) of Regulation (EC) No 207/2009 — Nature of use of the mark — Form differing in elements which do not alter the distinctive character)

(2017/C 402/27)

Language of the case: German

Parties

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

Defendant: European Union Intellectual Property Office (represented by A. Schifko and D. Hanf, acting as Agents)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 9 January 2014 (Case R 927/2013-1) relating to revocation proceedings between Mr Klement and Bullerjan

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Toni Klement to bear his own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) before the General Court and the Court of Justice.*

([1]) OJ C 245, 28.7.2014.

Judgment of the General Court of 10 October 2017 — Cofra v EUIPO — Armand Thiery (1841)

(Case T-233/15) ([1])

(EU trade mark — Invalidity proceedings — EU word mark 1841 — Earlier national word mark AD-1841-TY — Relative ground for refusal — Genuine use of the earlier mark — Taking into account of additional evidence — Articles 57(2) and 76(2) of Regulation (EC) No 207/2009 (now Articles 64(2) and 95(2) of Regulation (EU) 2017/1001) — Rule 40(6) of Regulation (EC) No 2868/95 (now Article 19(2) of Delegated Regulation (EU) 2017/1430) — Point (a) of the second subparagraph of Article 15(1) of Regulation No 207/2009 (now point (a) of the second subparagraph of Article 18(1) of Regulation 2017/1001) — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation 2017/1001))

(2017/C 402/28)

Language of the case: English

Parties

Applicant: Cofra Holding AG (Zug, Switzerland) (represented by M. Aznar Alonso, lawyer)

Defendant: European Union Intellectual Property Office (represented by M. Capostagno and A. Folliard-Monguiral, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Armand Thiery SAS (Levallois-Perret, France) (represented by A. Grolée, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 26 February 2015 (Case R 805/2014-1) relating to invalidity proceedings between Armand Thiery and Cofra Holding.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Cofra Holding AG to bear its own costs and to pay those incurred, in connection with the present proceedings, by the European Union Intellectual Property Office (EUIPO) and by Armand Thiery SAS.*

([1]) OJ C 213, 29.6.2015.

Judgment of the General Court of 10 October 2017 — Kolachi Raj Industrial v Commission

(Case T-435/15) ([1])

(Dumping — Import of bicycles consigned from Cambodia, Pakistan and the Philippines — Extension to those imports of the definitive anti-dumping duty imposed on imports of bicycles originating in China — Implementing Regulation (EU) 2015/776 — Article 13(2)(a) and (b) of Regulation (EC) No 1225/2009 — Assembly operations — Provenance and origin of bicycle parts — Certificates of origin — Insufficient evidentiary value — Manufacturing costs of bicycle parts)

(2017/C 402/29)

Language of the case: English

Parties

Applicant: Kolachi Raj Industrial (Private) Ltd (Karachi, Pakistan) (represented by: P. Bentley, QC)

Defendant: European Commission (represented by: J.-F. Brakeland, M. França and A. Demeneix, acting as Agents)

Intervener in support of the defendant: European Bicycle Manufacturers Association (EBMA) (represented by: L. Ruessmann, lawyer, and J. Beck, Solicitor)

Re:

Application pursuant to Article 263 TFEU seeking the annulment of Commission Implementing Regulation (EU) 2015/776 of 18 May 2015 extending the definitive anti-dumping duty imposed by Council Regulation (EU) No 502/2013 on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from Cambodia, Pakistan and the Philippines, whether declared as originating in Cambodia, Pakistan and the Philippines or not (OJ 2015, L 122, p. 4), to the extent that it applies to the applicant.

Operative part of the judgment

The Court:

1. *Annuls Commission Implementing Regulation (EU) 2015/776 of 18 May 2015 extending the definitive anti-dumping duties imposed by Council Regulation (EU) No 502/2013 on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from Cambodia, Pakistan and the Philippines, whether declared as originating in Cambodia, Pakistan and the Philippines or not, to the extent that it applies to Kolachi Raj Industrial (Private) Ltd;*

2. *Orders the European Commission to bear its own costs and to pay those of Kolachi Raj Industrial (Private) Ltd;*

3. *Orders the European Bicycle Manufacturers Association (EBMA) to bear its own costs.*

([1]) OJ C 328, 5.10.2015.

Judgment of the General Court of 11 October 2017 — Osho Lotus Commune v EUIPO — Osho International Foundation (OSHO)

(Case T-670/15) ([1])

(EU trade mark — Proceedings for a declaration of invalidity — EU word mark OSHO — Absolute ground for refusal — Lack of descriptive character — Distinctive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and (c) of Regulation (EU) 2017/1001) — No adverse effect on public policy — Article 7(1)(f) of Regulation (EC) No 207/2009 (now Article 7(1)(f) of Regulation (EU) 2017/1001))

(2017/C 402/30)

Language of the case: German

Parties

Applicant: Osho Lotus Commune eV (Cologne, Germany) (represented by: M. Viefhues, lawyer)

Defendant: European Union Intellectual Property Office (represented by: P. Ivanov and A. Schifko, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Osho International Foundation (Zurich, Switzerland) (represented by: B. Brandreth, Barrister)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 22 September 2015 (Case R 1997/2014-4), relating to proceedings for a declaration of invalidity between Osho Lotus Commune and Osho International Foundation.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Osho Lotus Commune eV to bear, in addition to its own costs, those incurred by the European Union Intellectual Property Office (EUIPO);*

3. *Orders Osho International Foundation to bear its own costs.*

([1]) OJ C 27, 25.1.2016.

Judgment of the General Court of 6 October 2017 — NRJ Group v EUIPO — Sky International (SKY ENERGY)

(Case T-184/16) ([1])

(EU trade mark — Opposition proceedings — Application for the EU word mark SKY ENERGY — Earlier EU word mark NRJ — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001)

(2017/C 402/31)

Language of the case: English

Parties

Applicant: NRJ Group (Boileau, France) (represented by: M. Antoine-Lalance, lawyer)

Defendant: European Union Intellectual Property Office (represented by: H. O'Neill, Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Sky International AG (Zug, Switzerland) (represented by: J. Barry, Solicitor)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 5 February 2016 (Case R 3137/2014-5), relating to opposition proceedings between NRJ Group and Sky International.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders NRJ Group to pay the costs.*

([1]) OJ C 232, 27.6.2016.

Judgment of the General Court of 10 October 2017 — Solelec and Others v Parliament

(Case T-281/16) ([1])

(Public works contracts — Tendering procedure — Electrical work (high-voltage current) as part of the project for the extension and refurbishment of the Parliament's Konrad Adenauer building in Luxembourg — Rejection of the tender submitted by a tenderer and decision to award the contract to another tenderer — Manifest error of assessment — Selection criteria — Technical and professional capacity — Award criteria — Abnormally low tender — Market value)

(2017/C 402/32)

Language of the case: French

Parties

Applicants: Solelec SA (Esch-sur-Alzette, Luxembourg), Mannelli & Associés SA (Bertrange, Luxembourg), Paul Wagner et fils SA (Luxembourg, Luxembourg) and Socom SA (Foetz, Luxembourg) (represented by S. Marx, lawyer)

Defendant: European Parliament (represented by M. Mraz and L. Chrétien, acting as Agents)

Re:

Application under Article 263 TFEU for the annulment, first, of the Parliament decision of 27 May 2016 rejecting the tender submitted by the applicants in respect of lot No 75 in the context of the tender procedure INLO-D-UPIL-T-14-A04, entitled 'Electricity — power' concerning the project to extend and modernise the Konrad Adenauer building in Luxembourg (Luxembourg), and secondly, the decision awarding that lot to another tenderer.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Solelec SA, Mannelli & Associés SA, Paul Wagner et fils SA and Socom SA to pay the costs, including including those incurred in the proceedings for interim measures.*

([1]) OJ C 260, 18.7.2016.

Judgment of the General Court of 12 October 2017 — Moravia Consulting v EUIPO — Citizen Systems Europe (SDC-554S)

(Case T-316/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark SDC-554S — Earlier non-registered national word mark SDC-554S — Relative ground for refusal — Article 8(4) of Regulation (EC) No 207/2009 (now Article 8(4) of Regulation (EU) 2017/1001) — Evidence establishing the content of national law — Rule 19(2)(d) of Regulation (EC) No 2868/95 (now Article 7(2)(d) of Delegated Regulation (EU) 2017/1430) — Production of evidence for the first time before the Board of Appeal — Discretion of the Board of Appeal — Article 76(2) of Regulation No 207/2009 (now Article 95(2) of Regulation (EU) 2017/1001))

(2017/C 402/33)

Language of the case: English

Parties

Applicant: Moravia Consulting spol. s r. o. (Brno, Czech Republic) (represented by: M. Kyjovský, lawyer)

Defendant: European Union Intellectual Property Office (represented by: D. Gája, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Citizen Systems Europe GmbH (Stuttgart, Germany) (represented by: C. von Donat, J. Lipinsky, J. Hagenberg, T. Hollerbach and C. Nitschke, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 1 April 2016 (Case R 1575/2015-2), relating to opposition proceedings between Moravia Consulting and Citizen Systems Europe

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Moravia Consulting spol. s r. o. to pay the costs.*

([1]) OJ C 287, 8.8.2016.

Judgment of the General Court of 12 October 2017 — Moravia Consulting v EUIPO — Citizen Systems Europe (SDC-888TII RU)

(Case T-317/16) [1]

(EU trade mark — Opposition proceedings — Application for EU word mark SDC-888TII RU — Earlier non-registered national word mark SDC-888TII RU — Relative ground for refusal — Article 8(4) of Regulation (EC) No 207/2009 (now Article 8(4) of Regulation (EU) 2017/1001) — Evidence establishing the content of national law — Rule 19(2)(d) of Regulation (EC) No 2868/95 (now Article 7(2)(d) of Delegated Regulation (EU) 2017/1430) — Production of evidence for the first time before the Board of Appeal — Discretion of the Board of Appeal — Article 76(2) of Regulation No 207/2009 (now Article 95 (2) of Regulation (EU) 2017/1001))

(2017/C 402/34)

Language of the case: English

Parties

Applicant: Moravia Consulting spol. s r. o. (Brno, Czech Republic) (represented by: M. Kyjovský, lawyer)

Defendant: European Union Intellectual Property Office (represented by: D. Gája, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervening before the General Court: Citizen Systems Europe GmbH (Stuttgart, Germany) (represented by: C. von Donat, J. Lipinsky, J. Hagenberg, T. Hollerbach and C. Nitschke, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 1 April 2016 (Case R 1566/2015-2), relating to opposition proceedings between Moravia Consulting and Citizen Systems Europe

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Moravia Consulting spol. s r. o. to pay the costs.*

[1] OJ C 287, 8.8.2016.

Judgment of the General Court of 12 October 2017 — Moravia Consulting v EUIPO — Citizen Systems Europe (SDC-444S)

(Case T-318/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark SDC-444S — Earlier non-registered national word mark SDC-444S — Relative ground for refusal — Article 8(4) of Regulation (EC) No 207/2009 (now Article 8(4) of Regulation (EU) 2017/1001) — Evidence establishing the content of national law — Rule 19(2)(d) of Regulation (EC) No 2868/95 (now Article 7(2)(d) of Delegated Regulation (EU) 2017/1430) — Production of evidence for the first time before the Board of Appeal — Discretion of the Board of Appeal — Article 76(2) of Regulation No 207/2009 (now Article 95(2) of Regulation (EU) 2017/1001))

(2017/C 402/35)

Language of the case: English

Parties

Applicant: Moravia Consulting spol. s r. o. (Brno, Czech Republic) (represented by: M. Kyjovský, lawyer)

Defendant: European Union Intellectual Property Office (represented by: D. Gája, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Citizen Systems Europe GmbH (Stuttgart, Germany) (represented by: C. von Donat, J. Lipinsky, J. Hagenberg, T. Hollerbach and C. Nitschke, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 1 April 2016 (Case R 1573/2015-2), relating to opposition proceedings between Moravia Consulting and Citizen Systems Europe

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Moravia Consulting spol. s r. o. to pay the costs.*

([1]) OJ C 287, 8.8.2016.

Judgment of the General Court of 10 October 2017 — Asna v EUIPO — Wings Software (ASNA WINGS)

(Case T-382/16) ([1])

(EU trade mark — Opposition proceedings — Application for the EU word mark ASNA WINGS — Earlier Benelux word mark WINGS — Relative ground for refusal — Likelihood of confusion — Similarity of signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Genuine use of the earlier mark — Article 42(2) and (3) of Regulation No 207/2009 (now Article 47(2) and (3) of Regulation 2017/1001) — Evidence submitted for the first time before the Court)

(2017/C 402/36)

Language of the case: English

Parties

Applicant: Asna, Inc. (San Antonio, Texas, United States) (represented by: J.-B. Devaureix and J. Erdozain López, lawyers)

Defendant: European Union Intellectual Property Office (represented by: M. Rajh, Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Wings Software BVBA (Heist-Op-den-Berg, Belgium) (represented by: C. Dekoninck and J. Bussé, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 26 April 2016 (Case R 436/2015-5), relating to opposition proceedings between Wings Software and Asna.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Asna, Inc. to pay the costs.*

([1]) OJ C 335, 12.9.2016.

Judgment of the General Court of 6 October 2017 — Falegnameria Universo dei F.lli Priarollo v EUIPO — Zanini Porte (silente PORTE & PORTE)

(Case T-386/16) ([1])

(EU trade mark — Revocation proceedings — EU figurative mark silente PORTE & PORTE — Genuine use — Place of use — Nature of use — Use by third parties — Declaration of revocation — Right of defence — Articles 75 and 76 of Regulation (EC) No 207/2009 — Article 51(1)(a) of Regulation No 207/2009)

(2017/C 402/37)

Language of the case: Italian

Parties

Applicant: Falegnameria Universo dei F.lli Priarollo Snc (Caerano di San Marco, Italy) (represented by: B. Osti, lawyer)

Defendant: European Union Intellectual Property Office (represented by: S. Di Natale and L. Rampini, Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Zanini Porte SpA (Bosco Chiesanuova, Italy) (represented by: A. Rizzoli, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 28 April 2016 (Case R 240/2015-1) concerning revocation proceedings between Zanini Porte and Falegnameria Universo dei F.lli Priarollo.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Falegnameria Universo dei F.lli Priarollo to pay the costs.*

([1]) OJ C 383, 17.10.2016.

Judgment of the General Court of 13 October 2017 — Sensi Vigne & Vini v EUIPO — El Grifo (CONTADO DEL GRIFO)

(Case T-434/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark CONTADO DEL GRIFO — Earlier EU figurative mark EL GRIFO — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2017/C 402/38)

Language of the case: Italian

Parties

Applicant: Sensi Vigne & Vini Srl (Lamporecchio, Italy) (represented by: initially by F. Caricato, and subsequently by M. Cartella and B. Cartella, lawyers)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carillo, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: El Grifo, SA (San Bartolomé, Lanzarote, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 25 May 2016 (Case R 2218/2015-2), relating to opposition proceedings between El Grifo and Sensi Vigne & Vini.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sensi Vigne & Vini Srl to pay the costs.*

([1]) OJ C 350, 26.9.2016.

Judgment of the General Court of 13 October 2017 — Brouillard v Commission

(Case T-572/16) ([1])

(Civil service — Recruitment — Competition notice — Open Competition EPSO/AD/306/15 — French-language lawyer-linguists at the Court of Justice of the European Union — Online application — Pre-selection based on qualifications — Qualifications required — Level of education corresponding to full legal education completed in a Belgian, French, or Luxembourg higher-education institution — 'Master 2' diploma (master's degree) in law, economics and management, private law, lawyer-linguist specialism — Issued following 'accreditation of skills gained through experience' — Non-admission to the tests in a competition — Action for annulment — Content of the application — Inadmissibility — Professional competence — Full legal education requirement — Recognition of qualifications)

(2017/C 402/39)

Language of the case: French

Parties

Applicant: Alain Laurent Brouillard (Brussels, Belgium) (represented by: initially P. Vande Casteele and subsequently H. Brouillard, lawyers)

Defendant: European Commission (represented by: G. Gattinara and F. Simonetti, acting as Agents)

Re:

Application under Article 270 TFEU seeking annulment of, first, the decision of the European Personnel Selection Office (EPSO), communicated to the applicant by email of 24 September 2015, not to admit him to the next stage of 'Open Competition EPSO/AD/306/15 based on qualifications and tests' held for the purpose of drawing up reserve lists from which to recruit, among others, 'French-language (FR) lawyer-linguists (AD 7)' of the Court of Justice of the European Union and, second, the selection and appointment decisions taken in the context of that competition.

Operative part of the judgment

The Court:

1. *Annuls the decision of the European Personnel Selection Office (EPSO), communicated to Mr Alain Laurent Brouillard by email of 24 September 2015, not to admit him to the next stage of 'Open Competition EPSO/AD/306/15 based on qualifications and tests' held for the purpose of drawing up reserve lists from which to recruit, among others, 'French-language (FR) lawyer-linguists (AD 7)' of the Court of Justice of the European Union;*

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

3. *Orders Mr Brouillard and the European Commission to bear their own respective costs, including those incurred in the context of the proceedings for interim measures in the case giving rise to the order of 20 January 2016, Brouillard v Commission (F-148/15 R).*

([1]) OJ C 59, 15.2.2016 (case initially registered before the European Union Civil Service Tribunal as Case F-148/15 and transferred to the General Court of the European Union on 1 September 2016).

Judgment of the General Court of 3 October 2017 — PM v ECHA

(Case T-656/16) ([1])

(REACH — Fee due for the registration of a substance — Reduction granted to SMEs — Determination of the size of the undertaking — ECHA's verification of the undertaking's declaration — Request for evidence demonstrating the status of a SME — Decision imposing an administrative charge)

(2017/C 402/40)

Language of the case: Spanish

Parties

Applicant: PM (represented by: C Zambrano Almero, lawyer)

Defendant: European Chemicals Agency (ECHA) (represented by: initially E. Maurage, J.-P. Trnka and M. Heikkilä, then J.-P. Trnka and M. Heikkilä, acting as Agents, and by C. Garcia Molyneux, lawyer)

Re:

Application based on Article 263 TFEU seeking the annulment of ECHA Decision EMS (2016) 3198 of 12 July 2016 finding that the applicant has not adduced the evidence necessary to benefit from the reduction of the fee for medium-sized enterprises and imposing an administrative charge.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Order PM to bear, in addition to its own costs, the costs incurred by the European Chemicals Agency (ECHA).*

([1]) OJ C 402, 31.10.2016.

Judgment of the General Court of 17 October 2017 — Murka v EUIPO (SCATTER SLOTS)

(Case T-704/16) ([1])

(EU trade mark — Application for the EU word mark SCATTER SLOTS — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001) — Distinctive character acquired through use — Article 7(3) of Regulation No 207/2009 (now Article 7(3) of Regulation (EU) 2017/1001))

(2017/C 402/41)

Language of the case: English

Parties

Applicant: Murka Ltd (Tortola, British Virgin Islands) (represented by: S. Santos Rodriguez, lawyer)

Defendant: European Union Intellectual Property Office (represented by: J. Ivanauskas, acting as Agent)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 21 June 2016 (Case R 471/2016-1), concerning the application for registration of the word sign SCATTER SLOTS as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Murka Ltd to pay the costs.*

([1]) OJ C 454, 5.12.2016.

Judgment of the General Court of 6 October 2017 — Karelia v EUIPO (KARELIA)

(Case T-878/16) ([1])

(EU trade mark — Application for the EU word mark 'KARELIA' — Absolute ground for refusal — Descriptive character — No distinctive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and (c) of Regulation (EU) 2017/1001)

(2017/C 402/42)

Language of the case: English

Parties

Applicant: Ino Karelia (Kalamata, Greece) (represented by: M. Karpathakis, lawyer)

Defendant: European Union Intellectual Property Office (represented by: L. Rampini, Agent)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 19 September 2016 (Case R 1562/2015-5), relating to an application for registration of the word sign 'KARELIA' as an EU trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ms Ino Karelia to pay the costs.*

([1]) OJ C 38, 6.2.2017.

Order of the President of the General Court of 28 September 2017 — Vnesheconombank v Council

(Case T-737/14 R)

(Application for interim measures — Common foreign and security policy — Restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine — Application for the suspension of operation of measures — No urgency)

(2017/C 402/43)

Language of the case: Spanish

Parties

Applicant: Bank for Development and Foreign Economic Affairs (Vnesheconombank) (Moscow, Russia) (represented by: J. Viñals Camallonga, J. Iriarte Ángel and L. Barriola Urruticoechea, lawyers)

Defendant: Council of the European Union (represented by: F. Florindo Gijón and P. Mahnič Bruni, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: F. Castillo de la Torre, S. Pardo Quintillán and D. Gauci, acting as Agents)

Re:

Application based on Articles 278 and 279 TFEU seeking suspension of operation of Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014, L 229, p. 13) and of Council Regulation (EU) No 83312014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 1), in so far as they concern the applicant.

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *Costs are reserved.*

Order of the General Court of 11 October 2017 — Guardian Glass España, Central Vidriera v Commission

(Case T-170/16) ([1])

(Actions for annulment — State aid — Tax advantages granted by a territorial entity within a Member State — Aid scheme declared to be incompatible with the internal market — Implementation of the decision — Obligation to examine the individual situation of the recipients — Commission's failure to adopt a position — Act not open to challenge — Inadmissibility)

(2017/C 402/44)

Language of the case: Spanish

Parties

Applicant: Guardian Glass España, Central Vidriera, SLU (Llodio, Spain) (represented by: M. Araujo Boyd, D. Armesto Macías and A. Lamadrid de Pablo, lawyers)

Defendant: European Commission (represented by: L. Flynn, B. Stromsky and P. Němečková, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking the annulment of the decision of the Commission contained in a document of 15 July 2015 entitled 'Tax matters in the Basque Country (Álava) — Informal communication regarding additional submissions in connection to compatibility with the 1998 guidelines on national regional aid'.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *There is no longer any need to adjudicate on the application for leave to intervene lodged by the Kingdom of Spain.*

3. *Guardian Glass España, Central Vidriera, SLU is to bear its own costs and to pay those incurred by the European Commission.*

4. *The Kingdom of Spain is to bear its own costs relating to the application for leave to intervene.*

([1]) OJ C 243, 4.7.2016.

Order of the General Court of 28 September 2017 — Aristoteleio Panepistimio Thessalonikis v Commission

(Case T-207/16) ([1])

(Action for annulment — Measures never having been adopted — Request for a declaration that there is no need to adjudicate — Request that the application be interpreted as referring to a measure other than the contested measures — Dismissal — Manifest inadmissibility)

(2017/C 402/45)

Language of the case: Greek

Parties

Applicant: Aristoteleio Panepistimio Thessalonikis (Thessaloniki, Greece) (represented by: V. Christianos, lawyer)

Defendant: European Commission (represented by: S. Delaude and A. Katsimerou, acting as Agents)

Re:

Application for annulment of an alleged exclusion decision taken against the applicant and of an alleged decision to register the applicant and to activate the exclusion warning against the applicant in the Early Warning System (EWS) or in the Early Detection and Exclusion System (EDES)

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *The Commission shall bear its own costs in the main proceedings and in the application for interim measures, and shall pay two thirds of the costs of Aristoteleio Panepistimio Thessalonikis in those proceedings.*

3. *Aristoteleio Panepistimio Thessalonikis shall bear one third of its own costs in those proceedings.*

([1]) OJ C 251,11.7.2016.

Order of the General Court of 27 September 2017 — Gaki v Europol

(Case T-366/16) ([1])

(Action for annulment and damages — Failure to comply with procedural requirements — Applications seeking an injunction — Manifest inadmissibility — Manifest lack of jurisdiction — Action manifestly lacking any foundation in law)

(2017/C 402/46)

Language of the case: German

Parties

Applicant: Anastasia-Soultana Gaki (Düsseldorf, Germany) (represented by: initially by A. Heinen, and subsequently by G. Keisers, lawyers)

Defendant: European Union Agency for Law Enforcement Cooperation (Europol) (represented by: D. Neumann and S. Ryder, acting as Agents, and by R. van der Hout and P. Lux, lawyers)

Re:

Application under Article 263 TFEU requesting that, in essence, Europol be ordered to undertake certain actions, and seeking annulment of the decision of the Joint Supervisory Body of Europol of 4 May 2016 concerning a complaint filed by the applicant, and application under Article 268 TFEU seeking compensation for the damage which the applicant claims to have suffered.

Operative part of the order

1. *The action is dismissed.*

2. *Ms Anastasia-Soultana Gaki is ordered to pay the costs.*

([1]) OJ C 402, 31.10.2016.

Order of the General Court of 10 October 2017 — Alex v Commission

(Case T-841/16) ([1])

(Action for annulment — State aid — Financing of an urban development project — Complaint — Preliminary examination procedure — Decision of the Commission finding no State aid — Action challenging the merits of the Commission's decision — No individual concern — Inadmissibility)

(2017/C 402/47)

Language of the case: French

Parties

Applicant: Alex SCI (Bayonne, France) (represented by: J. Fouchet, lawyer)

Defendant: European Commission (represented by: K Herrmann and C. Georgieva-Kecsmar, acting as Agents)

Re:

Application based on Article 263 TFEU seeking the annulment of the Commission's decision rejecting a complaint relating to State aid allegedly unlawfully granted by the French Republic to the Côte-Basque-Adour Conurbation Authority (SA.44409).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *There is no longer any need to adjudicate on the French Republic's application for leave to intervene.*

3. *Alex SCI shall bear its own costs and those incurred by the European Commission.*

4. *The French Republic shall bear its own costs relating to the application for leave to intervene.*

([1]) OJ C 30, 30.1.2017.

Order of the President of the General Court of 29 September 2017 — Amplexor Luxembourg v Commission

(Case T-211/17 R)

(Interim measures — Public service contracts — Application for interim measures — Lack of urgency)

(2017/C 402/48)

Language of the case: French

Parties

Applicant: Amplexor Luxembourg Sàrl (Bertrange, Luxembourg) (represented by: J.-F. Steichen, lawyer)

Defendant: European Commission (represented by: J. Estrada de Solà and O. Verheecke, acting as Agents)

Re:

Application on the basis of Articles 278 and 279 TFEU for the grant of interim measures seeking, first, the suspension of operation of the decision of 13 February 2017 of the Publications Office of the European Union (PO) in the call for tenders No 10651, inasmuch as it places the tender of the consortium Jouve and Skrivanek in first place, and secondly, the suspension of the framework contract concluded between the PO and that consortium.

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *Costs are reserved.*

Order of the President of the General Court of 19 September 2017 — António Conde & Companhía v Commission

(Case T-244/17 R II)

(Interim measures — Fishing vessel — Northwest Atlantic Fisheries Organisation — Admissibility — New facts — Change in circumstances — Application for interim measures — Lack of interest)

(2017/C 402/49)

Language of the case: English

Parties

Applicant: António Conde & Companhía, SA (Gafanha de Nazaré, Portugal) (represented by: J.R. García-Gallardo Gil-Fournier, lawyer)

Defendant: European Commission (represented by: A. Bouquet, A. Lewis and F. Moro, acting as Agents)

Re:

Application pursuant to Articles 278 and 279 TFEU for the grant of interim measures ordering the European Commission to abstain from exerting pressure on the Republic of Portugal to exclude the fishing vessel *Calvão* from the list of Portuguese-flagged vessels authorised to fish in the NAFO Regulatory Area and to produce the documents pertaining to the exchanges between the Commission and the representatives of the Republic of Portugal regarding the exclusion of the applicant's vessels from the NAFO Regulatory Area.

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *The costs are reserved.*

Order of the Vice-President of the General Court of 26 September 2017 — Wall Street Systems UK v ECB

(Case T-579/17 R)

(Application for interim measures — Public service contracts — Tendering procedure — Provision of a treasury management system — Rejection of one tenderer's bid and award of the contract to another tenderer — Application for suspension of operation of a measure — No urgency)

(2017/C 402/50)

Language of the case: English

Parties

Applicant: Wall Street Systems UK Ltd (London, United Kingdom) (represented by: A. Csaki, lawyer)

Defendant: European Central Bank (ECB) (represented by: C. Kroppenstedt and I. Köpfer, acting as Agents, and by U. Soltész and A. Neun, lawyers)

Re:

Application pursuant to Articles 278 and 279 TFEU for the suspension of operation of the decision rejecting the appeal brought by the applicant in the context of the call for tenders 2016/S 093-165651.

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *The order of 29 August 2017 made in Case T-579/17 R is cancelled.*

3. *The costs are reserved.*

Action brought on 11 September 2017 — L v Parliament

(Case T-156/17)

(2017/C 402/51)

Language of the case: English

Parties

Applicant: L (represented by: I. Coutant Peyre, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— set aside the decision of the European Parliament to dismiss the applicant dated 24/06/2016 and received on 25/07/2016;

— order the Parliament to pay non-pecuniary damages of 100 000 euros; and

— order the Parliament to pay legal costs.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of the principles of protection of whistle-blowers as defined by Articles 22(a), Article 22(b) of the Staff Regulations, Article 6(1) of the Internal Rules and the respective interest of the Union.

2. Second plea in law, alleging absence of motivation.

3. Third plea in law, alleging obvious error of assessment.

4. Fourth plea in law, alleging breach of the principle of proportionality.

5. Fifth plea in law, alleging breach of the duty of care.

6. Sixth plea in law, alleging absence of response by the Parliament to the applicant’s request of assistance under Article 24, breach of the right to the defence, breach of the right to conciliation.

7. Seventh plea in law, alleging breach of the right of access to the documents against the applicant.

8. Eighth plea in law, alleging misuse of powers.

9. Ninth plea in law, alleging abusive dismissal.

Action brought on 6 August 2017 — Gestvalor 2040 and Others v SRB

(Case T-520/17)

(2017/C 402/52)

Language of the case: Spanish

Parties

Applicants: Gestvalor 2040, SL (Madrid, Spain) and 596 other applicants (represented by: P. Rúa Sobrino, lawyer)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should take note of the annulment proceedings against the ‘Decision of the Single Resolution Board made at the Executive Session on 7 June 2017 relating to the resolution plan of Banco Popular Español, S.A., legal person identification No 80H66LPTVDLM0P28XF25, addressed to the FROB (SRB/EES/2017/08)’and, upon the completion of the relevant procedures;

— Annul the contested Decision;

— Declare Articles 18 and 29 of Regulation (EU) No 806/2014 illegal and inapplicable;

— Order the Single Resolution Board to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 16 August 2017 — Cambra Abaurrea v Parliament and Others

(Case T-553/17)

(2017/C 402/53)

Language of the case: Spanish

Parties

Applicant: Agustín Cambra Abaurrea (Marcilla, Spain) (represented by: A. Mayayo Martínez, lawyer)

Defendants: European Parliament, Council of the European Union and Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— Take note of the lodging in due form and within the prescribed period of an action for annulment before the General Court of the European Union against the implementation of the decision of the Single Resolution Board, an implementing decision which has caused significant harm to the assets of the former and legitimate shareholders and debt holders of the Banco Popular, and deliver a judgment in due course annulling that decision;

— In the alternative, declare with immediate effect the suspension of the implementation carried out by the Single Resolution Board and the FROB (Fund for Orderly Bank Restructuring), given that its validity and entry into force results in harm to the assets of the Banco Popular's shareholders, who have lost that status, which it is difficult or impossible to remedy.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 29 August 2017 — Alonso Goñi and Others v SRB

(Case T-585/17)

(2017/C 402/54)

Language of the case: Spanish

Parties

Applicants: Pablo Alonso Goñi (Legutio, Spain), Xavier Alonso Vicinay (Legutio), Leire Alonso Vicinay (Legutio) (represented by: R. García-Bragado Acín, lawyer)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— Take note of this action for annulment of Decision SRB/EES /2017/08 of 7 June 2017 concerning the resolution of Banco Popular, as well as the valuation on which it is based and, once the relevant verifications have been completed, declare the action admissible and follow the procedure set out in Articles 120 et seq. of the Rules of Procedure of the General Court;

— Given that it is practically impossible to reverse the implementation of that decision, declare that SRB is under an obligation to make good the damage caused to the applicants, which corresponds to the amount of their investment or the amount determined at the time of enforcement of the judgment;

— Order the Single Resolution Board to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 4 September 2017 — Balti Gaas v Commission

(Case T-596/17)

(2017/C 402/55)

Language of the case: English

Parties

Applicant: Balti Gaas OÜ (Tallinn, Estonia) (represented by: E. Tamm and L. Naaber-Kivisoo, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— join the current case with case T-236/17;

— declare pursuant to the third paragraph of Article 265 of TFEU that the Commission has failed to comply with its obligations under Union law by failing to adopt a motivated decision regarding the applicant's funding application and to order the Commission to carry out a thorough evaluation of the applicant's funding application, to make a motivated decision and deliver that decision to the applicant;

— alternatively, in case the Court finds that the merits for a failure to act are not met, the applicant asks the Court to annul the Commission Implementing Decision of 14/03/2017 on the selection and award of grants for actions contributing to projects of common interest under the Connecting Europe Facility in the field of trans-European energy infrastructure (C(2017) 1593 final); and

— order the defendants to bear their costs and pay those incurred by the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission Implementing Decision of 14/03/2017 on the selection and award of grants for actions contributing to projects of common interest under the Connecting Europe Facility in the field of trans-European energy infrastructure (C (2017) 1593 final) only mentions the applicants receiving funds but Commission has failed to make a motivated decision regarding the applicant's funding application.

2. Second plea in law, alleging that the the Commission has infringed an essential procedural requirement, it has failed to give a statement of reasons.

3. Third plea in law, alleging that INEA/Commission have exceeded their competence. INEA/Commission refused funding based on the reasoning that the Paldiski LNG terminal is no longer necessary for the Baltic Sea region's security of supply of natural gas. Applicant finds that the effect of this statement is a substantial modification of a PCI list (Regulation (EU) No 347/2013 and Regulation (EU) No 2016/89. To do so, the Commission has to adopt a delegated regulation, not send a letter to the Applicant.

4. Fourth plea in law, alleging that INEA/Commission has infringed an essential procedural requirement on the ground of failure to give a statement of reasons for the contested decision — INEA/Commission did not give sufficient reasons why the applicant did not receive at least 3 points in all categories and INEA/Commission reasons were based on a false understanding of the facts.

Action brought on 7 September 2017 — Vialto Consulting v Commission

(Case T-617/17)

(2017/C 402/56)

Language of the case: Greek

Parties

Applicant: Vialto Consulting Kft. (Budapest, Hungary) (represented by: V. Christianos, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— order the Commission to pay the applicant the sum of EUR 190 951,93, as the actual loss which it has caused the applicant, and the sum of EUR 129 992,63 as loss of profit, with interest for late payment from delivery of judgment on the present dispute until settlement in full;

— order the Commission to pay the applicant the sum of EUR 150 000, as compensation for the harm to professional reputation which it has caused the applicant, with interest for late payment from delivery of judgment on the present dispute until settlement in full; and

— order the Commission to pay the applicant's costs.

Pleas in law and main arguments

By the present action, the public limited company named 'Vialto Consulting Korlátolt Felelősségű Társaság' ('Vialto') seeks from the General Court of the European Union, pursuant to the second paragraph of Article 340 TFEU in conjunction with Article 268 TFEU, compensation for the damage which it has suffered on account of unlawful conduct on the part of the Anti-Fraud Office ('OLAF') and of other services of the European Commission ('the Commission'), in the context of performance of service contract No TR2010/0311.01-02/001 financed by the European Union, which had been entered into between the Central Finance and Contracts Unit ('the CFCU') of the Republic of Turkey and a consortium of companies in which Vialto participated.

Specifically, the Commission — both through OLAF and through other Commission services — has caused Vialto the following damage: (a) financial loss amounting to EUR 190 951,93 as actual loss; (b) financial loss amounting to EUR 129 992,63 as loss of profit; and (c) non-material harm amounting to EUR 150 000 on account of injury to its professional reputation.

Vialto submits that it has suffered the foregoing damage on account of acts and omissions of the Commission both during the on-the-spot check that OLAF carried out in respect of Vialto and after that check. It submits, more specifically, that the Commission infringed the following rules, which confer rights on individuals:

— Article 7(1) of Regulation No 2185/1996 in relation to the carrying out of checks on the part of OLAF, particularly in relation to its conferred and limited power to check;

— the right to good administration, the right to protection of legitimate expectations and the principle of proportionality, in relation to the check that OLAF carried out;

— the right to be heard, in relation to the acts of the Commission's Directorate-General for Neighbourhood and Enlargement Negotiations after OLAF's check was completed.

Action brought on 08 September 2017 – Teollisuuden Voima v Commission

(Case T-620/17)

(2017/C 402/57)

Language of the case: English

Parties

Applicant: Teollisuuden Voima Oyj (Eurajoki, Finland) (represented by: M. Powell, Solicitor, Y. Utzschneider, K. Struckmann and G. Forwood, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision (EU) 2017/1021 of 10 January 2017 on State aid SA.44727 2016/C (ex 2016/N) which France is planning to implement in favour of the Areva Group ([1]);

— order the Commission to pay the applicant's costs.

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 that that the Commission failed to state sufficient reasons, contrary to Article 296 TFEU, due to the excessive redactions of the published version of the contested decision that prevent the applicant from ascertaining the reasons for it and the Court from carrying out its review.

2. Second plea in law, alleging manifest errors of assessment concerning the restoration of the Areva Group's long-term viability.

   — The applicant refers in this regard to the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, which require that a restructuring plan restore the long-term viability of the beneficiary within a reasonable timescale and on the basis of realistic assumptions ([2]).

3. Third plea in law, alleging manifest errors in the assessment of the proposed measures to limit distortions of competition in the main market in which the Areva Group will be active after restructuring.

4. Fourth plea in law, alleging an error of assessment in making the State aid approval subject to inappropriate and insufficient conditions.

5. Fifth plea in law, alleging a manifest error in finding the State aid compatible with the internal market, in view of the fact that the proposed restructuring plan does not provide sufficient guarantees that Areva will be able to deliver on the timely completion of the OL3 Project, thus running contrary to certain other EU Treaty objectives which should have been taken in account when examining the compatibility of the State aid.

(1) OJ 2017 L 155, p. 23.
(2) OJ 2014 C 249, p. 1, point 47.

Action brought on 21 September 2017 — González Buñuel and Others v SRB

(Case T-642/17)

(2017/C 402/58)

Language of the case: Spanish

Parties

Applicants: Antonio González Buñuel (Barcelona, Spain) and 12 other applicants (represented by: J. De Castro Martín, M. Azpitarte Sánchez and J. Ruiz de Villa Jubany, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— In accordance with Article 263 TFEU, annul the Decision of the SRB concerning the BANCO POPULAR ESPAÑOL (SRB/EES/2017/08);

— In accordance with Article 340(2) TFEU and Article 41(3) of the the Charter of Fundamental Rights of the European Union, order SRB to pay to the applicants, at the expense of the Single Resolution Fund established in accordance with Article 67 of Regulation No 806/2014, compensation for the damage caused to the applicants as a direct consequence of the Decision concerning the BANCO POPULAR ESPAÑOL and the value of which corresponds to the market value of the capital instruments of the banking institution the day preceding (6 June 2017) the implementation of the resolution scheme; in the alternative, in the event that the Court does not uphold the previous claim for compensation, order SRB to pay to the applicants compensation, the value of which corresponds to the difference, which will be determined by the valuation of the independent person laid down in Article 20(16) of Regulation No 806/2014, between the payment in respect of their claims received by the applicants pursuant to the application of the Decision and the amount they would have received under a normal insolvency procedure;

— In accordance with Articles 133 and 134 of the Rules of Procedure of the General Court, order SRB to pay the costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 22 September 2017 — Dadimer and Others v SRB

(Case T-648/17)

(2017/C 402/59)

Language of the case: Spanish

Parties

Applicants: Dadimer, S.L. (Madrid, Spain) and 11 other applicants (represented by: M. Romero Rey and I. Salama Salama, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— On the basis of Article 263 TFEU, annul Decision SRB/EES/2017/08 of the Single Resolution Board (SRB) of 7 June 2017 adopting a resolution scheme in respect of the Banco Popular Español, S.A.;

— In accordance with Article 340(2) TFEU and Article 41(3) of the Charter of Fundamental Rights of the European Union, order the Single Resolution Board to pay compensation to the applicants for the harm suffered, in an amount corresponding to the nominal value of the bonds, updated at the date of resolution, and the related default interest accrued from that date up to the date the reimbursement will be made;

— In accordance with Articles 133 and 134 of the Rules of Procedure of the General Court, order the Single Resolution Board to pay the costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 25 September 2017 — ViaSat v Commission

(Case T-649/17)

(2017/C 402/60)

Language of the case: English

Parties

Applicant: ViaSat, Inc. (Carlsbad, California, United States) (represented by: J. Ruiz Calzado, L. Marco Perpiñà and S. Semey, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the European Commission's implied negative decision of 13 July 2017 resulting from the failure by the Commission to reply within the prescribed time limit to the applicant's confirmatory application of 31 May 2017 in relation to the access to documents request registered on 20 March 2017 under reference GestDem N° 2017/1725;

— order the Commission to pay the costs, including the costs of any intervening parties.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission breached its duty to state reasons under Article 296(2) TFEU.

   — The applicant argues in the first place that there has been an absolute failure to state reasons, given the implied refusal of access to the requested document, entitled 'Roadmap of measures towards the compliance of selected and authorised MSS operators with common conditions of Decision 626/2008/EC ([1]), including intermediate new steps and corresponding time limits'. To the extent that the Court should consider that the Commission discharged its duty to state reasons already in the refusal letter of 5 May 2017, under Article 7(1) of Regulation 1049/2001 ([2]), in response to the applicant's initial request, the reasoning therein by way of fiction also being the reasoning of the implicit decision, adopted pursuant to Article 8(3) of that regulation, the applicant requests the Court to consider the subsequent pleas directed at that reasoning.

2. Second plea in law, alleging that the Commission failed to perform a concrete and individual examination of the requested document.

3. Third plea in law, alleging that the Commission failed to state reasons and erroneously applied the exception concerning the protection of commercial interests, as referred to in the first indent of Article 4(2) of Regulation 1049/2001.

4. Fourth plea in law, alleging that the Commission failed to state reasons and erroneously applied the exception concerning the protection of investigations, as referred to in the third indent of Article 4(2) of Regulation 1049/2001.

5. Fifth plea in law, alleging that the Commission erroneously determined there to be no overriding interest within the meaning of Article 4(2) of Regulation 1049/2001.

6. Sixth plea in law, alleging that the Commission erroneously determined that partial access was not possible within the meaning of Article 4(6) of Regulation 1049/2001.

([1]) Decision No 626/2008/EC of the European Parliament and of the Council of 30 June 2008 on the selection and authorisation of systems providing mobile satellite services (MSS) (OJ 2008 L 172, p. 15).

([2]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 22 September 2017 — Sata v EUIPO — Zhejiang Auarita Pneumatic Tools (Spray gun for paint)

(Case T-651/17)

(2017/C 402/61)

Language in which the application was lodged: English

Parties

Applicant: Sata GmbH & Co. KG (Kornwestheim, Germany) (represented by: K. Manhaeve, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Zhejiang Auarita Pneumatic Tools Co. Ltd (Zhejiang, China)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant

Design at issue: Community design of a 'spray gun for paint'; Community design No 1259626-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 12 July 2017 in Case R 914/2016-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and — if applicable — Zhejiang Auarita Pneumatic Tools Co. Ltd to jointly and severely pay all the costs.

Pleas in law

— Infringement of Articles 6.1(b), 6.2, 60.1, 62 and 64 of Regulation No 6/2002.

Action brought on 25 September 2017 — Inditex v EUIPO — Ansell (ZARA TANZANIA ADVENTURES)

(Case T-655/17)

(2017/C 402/62)

Language in which the application was lodged: English

Parties

Applicant: Industria de Diseño Textil, SA (Inditex) (Arteixo, Spain) (represented by: G. Marín Raigal, G. Macías Bonilla, P. López Ronda, E. Armero Lavie, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other parties to the proceedings before the Board of Appeal: Zainab Ansell (Moshi, Tanzania) and Roger Ansell (Moshi)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: EU figurative mark containing the word elements 'ZARA TANZANIA ADVENTURES' — Application for registration No 8 320 591

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 5 July 2017 in Joined Cases R 2330/2011-2 and R 2369/2011-2

Form of order sought

The applicant claims that the Court should:

— partially annul the decision of the Second Board of Appeal of the EUIPO dated 5 July 2017, in joined Cases R 2330/2011-2 and R 2369/2011-2, in particular regarding the allowing of the EUTM application No. 8320591 to proceed to registration for the challenged services in Classes 39 and 43;

— order that the of the appeal action be borne by the defendant (EUIPO) and the intervener, and those incurred in proceedings before the EUIPO's Opposition Division and the Second Board of Appeal by the intervener.

Plea in law

— Infringement of Article 8(5) of Regulation No 207/2009.

Action brought on 25 September 2017 — Sumol + Compal Marcas v EUIPO — Jacob (Dr. Jacob's essentials)

(Case T-656/17)

(2017/C 402/63)

Language in which the application was lodged: English

Parties

Applicant: Sumol + Compal Marcas, SA (Carnaxide, Portugal) (represented by: A. De Sampaio, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Ludwig Manfred Jacob (Heidesheim, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: EU word mark containing the word elements 'Dr. Jacob's essentials' in orange, yellow and shades of green — Application for registration No 13 742 903

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 11 July 2017 in Case R 2067/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to the proceedings to pay the costs.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 21 September 2017 — Stichting Against Child Trafficking v OLAF

(Case T-658/17)

(2017/C 402/64)

Language of the case: English

Parties

Applicant: Stichting Against Child Trafficking (Nijmegen, Netherlands) (represented by: E. Agstner, lawyer)

Defendant: European Anti-Fraud Office

Form of order sought

The applicant claims that the Court should:

— annul decision of 3 August 2017, in Case OC/2017/0451, of the European Anti-Fraud Office (OLAF) not to open an administrative investigation;

— instruct OLAF to open an administrative investigation and depending of its findings pass the matter to national law enforcement for criminal proceedings, and/or to European Institutions for administrative proceedings

— order OLAF to pay the costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging infringements of EU law and manifest errors of assessment committed by OLAF

   — The contested decision does not comply with the fundamental values of the European Union, the acquis communautaire and the United Nations convention on the rights of the child, and is based on a manifestly erroneous reading of the documents in the case-file.

2. Second plea in law, alleging a failure to act and open investigation

   — OLAF ignores the link between the previous and current effects of EU fundings being spent on organisations and policies contrary to EU law and values.

3. Third plea in law, based on the right to be heard

   — OLAF manifestly did not show any interest in truth-finding by refusing to call in witnesses and to meet with the applicant.

4. Fourth plea in law, alleging infringements of procedures

   — No transcript was established with regard to the meeting of 10 September 2014 during which the applicant and two civil servants of the European Commission brought statements and supporting facts.

Action brought on 27 September 2017 – China Construction Bank v EUIPO — Groupement des cartes bancaires (CCB)

(Case T-665/17)

(2017/C 402/65)

Language in which the application was lodged: English

Parties

Applicant: China Construction Bank Corp. (Beijing, China) (represented by: A. Carboni, J. Gibbs, Solicitors)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Groupement des cartes bancaires (Paris, France)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark figurative mark containing the word element 'CCB' — Application for registration No 13 359 609

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 14 June 2017 in Case R 2265/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and remit the EU trade mark application no. 13 359 609 to the EUIPO to allow it to proceed to registration; and

— order EUIPO and any intervening parties in this Appeal to pay their own costs and pay the Applicant's costs of these proceedings and those of the appeal before the First Board of Appeal in Case R 2265/2016-1 and of Opposition B 2 524 422 before the Opposition Division.

Pleas in law

— Infringement of Article 75 of Regulation EUTMR by basing its decision on reasons and evidence on which the Applicant had no opportunity to present its comments;

— Infringement of Article 76(1) EUTMR by taking account of facts, evidence and arguments not submitted by either party and evidence which was not filed in the case;

— Infringement of Article 8(1)(b) EUTMR as a result of the above infringements and also by incorrectly applying the guidance of the Courts as to how to assess the likelihood of confusion.

Action brought on 25 September 2017 — Mamas and Papas v EUIPO — Wall-Budden (Cot bumpers)

(Case T-672/17)

(2017/C 402/66)

Language in which the application was lodged: English

Parties

Applicant: Mamas and Papas Ltd (Huddersfield, United Kingdom) (represented by: J. Reid, Barrister and B. Whitehead, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Jane Wall-Budden (Byfleet, United Kingdom)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Other party to the proceedings before the Board of Appeal

Design at issue: Community design of cot bumpers — Community design No 1230460-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 25 July 2017 in Case R 208/2016-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— declare Community Registered Design No 1230460-0001 invalid;

— order the design holder to bear the costs and fees of the applicant in the invalidity and appeal proceedings.

Pleas in law

— Infringement of Article 7(1) of Regulation No 6/2002;

— Infringement of Articles 3 and 4 of Regulation No 6/2002;

— The Board of Appeal failed to give less weight to features not visible in use;

— Infringement of article 8(1) of Regulation No 6/2002.

Action brought on 2 October 2017 — UN v Commission

(Case T-676/17)

(2017/C 402/67)

Language of the case: German

Parties

Applicant: UN (represented by: H. Tettenborn, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— set aside the assessment of the applicant for 2015 according to assessment report No 260603 in its final version of 1 December 2015 (in the version which that assessment decision most recently maintained through the rejection of the applicant's complaint on 21 June 2017);

— order the Commission to pay to the applicant an appropriate sum, in an amount to be determined by the Court, as compensation for the non-material damage suffered by the applicant; and

— order the Commission to bear its own costs and to pay the costs incurred by the applicant.

Pleas in law and main arguments

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

1. First plea in law: manifest errors of assessment by the Commission, which are partially based on incorrect facts and on infringements of the duty of care and of the principle of good administration (Article 41 of the Charter of Fundamental Rights of the European Union).

2. Second plea in law: infringement by the Commission of the duty of care and of the principle of good administration (Article 41 of the Charter of Fundamental Rights of the European Union).

Action brought on 2 October 2017 — Khadi and Village Industries Commission v EUIPO — BNP Best Natural Products (Khadi)

(Case T-681/17)

(2017/C 402/68)

Language in which the application was lodged: English

Parties

Applicant: Khadi and Village Industries Commission (Mumbai Maharashtra, India) (represented by: J. Guise, N. Rose and V. Ellis, Solicitors)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: BNP Best Natural Products GmbH (Munich, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: EU word mark 'Khadi' — EU trade mark No 10 479 954

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 30 June 2017 in Case R 2083/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and find that the contested EUTM is invalid;

— make an award of costs in the favour of the applicant.

Pleas in law

— Infringement of Article 76(2) of Regulation No 207/2009;

— The Board of Appeal distorted the evidence;

— Infringement of Articles 7(1)(g) and 52(1)(a) of Regulation No 207/2009;

— Infringement of Articles 7(1)(i) and 52(1)(a) of Regulation No 207/2009;

— Infringement of Article 52(1)(b) of Regulation No 207/2009.

Action brought on 2 Octobre 2017 — Khadi and Village Industries Commission v EUIPO — BNP Best Natural Products (khadi Naturprodukte aus Indien)

(Case T-682/17)

(2017/C 402/69)

Language in which the application was lodged: English

Parties

Applicant: Khadi and Village Industries Commission (Mumbai Maharashtra, India) (represented by: J. Guise, N. Rose, V. Ellis, Solicitors)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: BNP Best Natural Products GmbH (Munich, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: EU word mark 'khadi Naturprodukte aus Indien' — EU trade mark No 8 216 343

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 12 July 2017 in Case R 2085/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and find that the contested EUTM is invalid;

— make an award of costs in the favour of the applicant.

Pleas in law

— Infringement of Article 76(2) of Regulation No 207/2009;

— The Board of Appeal distorted the evidence;

— Infringement of Articles 7(1)(g) and 52(1)(a) of Regulation No 207/2009;

— Infringement of Article 52(1)(b) of Regulation No 207/2009.

Action brought on 2 October 2017 — Khadi and Village Industries Commission v EUIPO — BNP Best Natural Products (Khadi Ayurveda)

(Case T-683/17)

(2017/C 402/70)

Language in which the application was lodged: English

Parties

Applicant: Khadi and Village Industries Commission (Mumbai Maharashtra, India) (represented by: J. Guise, N. Rose, V. Ellis, Solicitors)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: BNP Best Natural Products GmbH (Munich, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: EU word mark 'Khadi Ayurveda' — EU trade mark No 13 118 724

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 12 July 2017 in Case R 2086/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and find that the contested EUTM is invalid;

— make an award of costs in the favour of the applicant.

Pleas in law

— Infringement of Article 76(2) of Regulation No 207/2009;

— The Board of Appeal distorted the evidence;

— Infringement of Articles 7(1)(g) and 52(1)(a) of Regulation No 207/2009;

— Infringement of Article 52(1)(b) of Regulation No 207/2009.

Action brought on 28 September 2017 — hoechstmass Balzer v EUIPO (Shape of a tape measure)

(Case T-691/17)

(2017/C 402/71)

Language of the case: German

Parties

Applicant: hoechstmass Balzer GmbH (Sulzbach, Germany) (represented by: K. Zapfer, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Tridimensional EU mark (Shape of a tape measure) — Application for registration No 15 004 997

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 28 July 2017 in Case R 2331/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of EUIPO of 28 July 2017 (Case R 2331/2016-4) — the contested decision — as regards the tridimensional mark 015004997;

— order the defendant/EUIPO to pay the costs of the appeal proceedings and the proceedings before the Board of Appeal;

in the alternative

— limit the list of goods in class 09 by adding the words ‘tailors’ to ‘tailors’ tape measure’ and annul the decision of the Fourth Board of Appeal of EUIPO of 28 July 2017 in that it covers ‘tailors’ tape measures’.

Plea in law

— Infringement of Article 7(1)(b) of Regulation No 207/2009.

Action brought on 10 October 2017 — Link Entertainment v EUIPO — García-Sanjuan Machado (SAVORY DELICIOUS ARTISTS & EVENTS)

(Case T-694/17)

(2017/C 402/72)

Language in which the application was lodged: Spanish

Parties

Applicant: Link Entertainment, SLU (Madrid, Spain) (represented by: E. Estella Garbayo, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Sandra García-Sanjuan Machado (Barcelona, Spain)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: European Union figurative mark containing the word elements 'SAVORY DELICIOUS ARTISTS & EVENTS' — European Union trade mark No 12 672 853

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 28 July 2017 in Case R 1758/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and find that the cancellation of EU trade mark No 12 672 853 'SAVORY DELICIOUS ARTISTS & EVENTS' for Classes 35 and 41 is unfounded; and

— order EUIPO to pay the costs of the present proceedings, including those incurred in the appeal and the invalidity proceedings.

Plea in law

— Infringement of Article 60(1)(a) of Regulation No 2017/1001, in conjunction with Article 8(1)(b) of that regulation.

Order of the General Court of 2 October 2017 — Danjaq v EUIPO (Shaken, not stirred)

(Case T-74/17) ([1])

(2017/C 402/73)

Language of the case: English

The President of the First Chamber has ordered that the case be removed from the register.

([1]) OJ C 121, 18.4.2017.

CORRIGENDA

Corrigendum to the Notice in the Official Journal in Case T-499/17

(Official Journal of the European Union C 330 of 2 October 2017)

(2017/C 402/74)

The Notice in Case T-499/17 Esfera Capital Agencia de Valores v Commission and SRB should read as follows:

Action brought on 4 August 2017 — Global Sistematic Investment Sicav v Commission and SRB

(Case T-499/17)

(2017/C 330/22)

Language of the case: Spanish

Parties

Applicant: Global Sistematic Investment Sicav, SL (Madrid, Spain) (represented by: E. Pastor Palomar, F. Arroyo Romero and N. Subuh Falero, lawyers)

Defendants: Commission and Single Resolution Board

Form of order sought

— Annul Decision SRB/EES/2017/08 of the Single Resolution Board of 7 June 2017 addressed to the Fund for Orderly Bank Restructuring (FROB) approving a restructuring plan in respect of Banco Popular Español;

— Annul European Commission Decision 2017/1246 of 7 June 2017 supporting the resolution plan for Banco Popular Español; and

— By virtue of the provision in Article 340 TFEU, declare that the SRB and European Commission are non-contractually liable and order them to make good the harm caused to the applicant.

Pleas in law and main arguments

The pleas in law and main arguments are similar to the arguments raised in Cases T-478/17, *Mutualidad de la Abogacía y Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*; T-481/17, *Fundación Tatiana Pérez de Guzmán y Bueno and SFL* v *Single Resolution Board*; T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*; T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*; T-484/17, *Fidesban and Others* v *Single Resolution Board* and T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*.

In particular, the applicant claims that the Commission misused its powers in the present case.

Corrigendum to the Notice in the Official Journal in Case T-501/17

(Official Journal of the European Union C 338 of 9 October 2017)

(2017/C 402/75)

The Notice in Case T-501/17 Mutualidad Complementaria de Previsión Social Renault España v Commission and SRB should read as follows:

Action brought on 7 August 2017 — Mutualidad Complementaria de Previsión Social Renault España v Commission and SRB

(Case T-501/17)

(2017/C 338/17)

Language of the case: Spanish

Parties

Applicant: Mutualidad Complementaria de Previsión Social Renault España (Madrid, Spain) (represented by: A. Solana López, lawyer)

Defendants: European Commission and Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— declare invalid, and consequently annul, Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme for Banco Popular Español S.A. transmitted to it by the Single Resolution Board, and also annul the decision of the Single Resolution Board (SRB/EEX/2017/08) on the adoption of a resolution scheme in respect of Banco Popular Español S.A. with identification No 80H66LPTDLMOP28XF25;

— In the alternative, if the General Court does not uphold the invalidity application above, declare the partial invalidity and annul in part SRB's decision mentioned above in so far as it concerns Article 6(1)(b) and (c) of that decision, relating to the conversion and depreciation of 64 695 preference shares (classified erroneously as additional capital Tier 1 instruments of the Banco Popular Español), although they were instruments issued by POPULAR ESPAÑOL, S.A. (ISIN D00910702).

Pleas in law and main arguments

The pleas in law and main arguments are similar to those raised in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán El Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Alvarez de Linera Granda* v *Commission and Single Resolution Board*.

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