Decision of the Opposition Division: Partly upheld the opposition.

Decision of the Board of Appeal: Annulment of the decision under appeal and dismissal of the opposition.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 ([1]) since there is a likelihood of confusion between the conflicting marks.

([1]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 22 November 2007 — Centre d'Étude et de Valorisation des Algues v Commission

(Case T-428/07)

(2008/C 22/90)

Language of the case: French

Parties

Applicant: Centre d'Étude et Valorisation des Algues SA (CEVA) (Pleubian, France) (represented by: J.-M. Peyrical, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— as the principal claim, find procedural irregularity and breach of the principle that both parties should be heard and therefore annul Commission debit note No 3240908670 of 20 September 2007 and order the Commission to repay the debit note at issue to CEVA;

— in the alternative, find that the errors found in the audit report are not sufficiently serious for Article 3.5 of Annex II to the contract to be applied; annul Commission debit note No 3240908670 of 20 September 2007 in so far as it claims full repayment of the sums paid to CEVA under the SEAHEALTH contract; and order the Commission to repay the debit note at issue in favour of CEVA;

— in the further alternative, appoint an expert of the Court of First Instance's own choice with the task of: taking up again CEVA's method of calculating the time spent on projects; comparing that method with the SEAHEALTH contract and with the actual costs submitted in the cost statements; stating, as a percentage, the difference between the total errors in the registration of work time as presented to the Commission and the total registration of that work time according to the calculation method applicable from that time on at CEVA; carrying out an assessment of the direct working time needed to carry out CEVA's tasks in the context of the SEAHEALTH contract; and stating whether that effective working time could have amounted to fewer than the 7 092,88 hours claimed by CEVA.

Pleas in law and main arguments

By this action, the applicant seeks annulment of the debit note by which the Commission ordered the repayment in full of the advances paid to the applicant in relation to the SEAHEALTH contract No QLK1-CT-2002-02433, concerning the project 'Food, Nutrition and Health' which was part of the 'Quality of Life and Management of Living Resources' key action ([1]).

In support of its application, it relies on a plea in law alleging breach of the rights of the defence inasmuch as the Commission, in breach of the principle that both parties should be heard, based its order for repayment on the timesheets and conclusions of OLAF of which the applicant had no knowledge.

In the alternative, the applicant challenges the Commission's application of Article 3.5 of Annex II and its finding that the facts in this case were sufficiently serious for it to rely on the concept of serious financial irregularities justifying full repayment of the advances.

([1]) Fifth framework programme of the European Community for research, technological development and demonstration activities (1998-2002).

Action brought on 23 November 2007 — Bodegas Montebello v OHIM — Montebello (MONTEBELLO RHUM AGRICOLE)

(Case T-430/07)

(2008/C 22/91)

Language in which the application was lodged: Spanish

Parties

Applicant: Bodegas Montebello, S.A. (Montilla, Spain) (represented by: T. Andrade Boué, M.I. Lehmann Novo, and A. Hernández Lehmann, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Montebello (limited company) (Guadalupe, France)

Form of order sought

— annulment of OHIM's decision of 7 September 2007 in Case R 223/2007-2;

— rejection of Community trade mark No 2.666.386;

— order OHIM to pay the costs including those of the intervener.

Pleas in law and main arguments

Applicant for a Community trade mark: Montebello (limited company)

Community trade mark concerned: figurative mark 'MONTEBELLO Rhum Agricole' (application No 2.266.386) for goods in Class 33 (alcoholic beverages, except beers).

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

Mark or sign cited in opposition: Spanish word mark 'MONTEBELLO' (No 1.148.196) for goods in Class 33.

Decision of the Opposition Division: opposition upheld.

Decision of the Board of Appeal: decision of the Opposition Division upheld and annulled.

Pleas in law: Misapplication of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark.

Action brought on 29 November 2007 — France v Commission

(Case T-432/07)

(2008/C 22/92)

Language of the case: French

Parties

Applicant: French Republic (represented by: G. de Bergues and A.-L. During, Agents)

Defendant: Commission of the European Communities

Form of order sought

— annul Commission Decision 2007/647/EC of 3 October 2007 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) [1], in so far as it excludes certain expenditure incurred by the applicant for producers' organisations in the fruit and vegetable sector in respect of the financial years 2003 and 2004;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the annulment of the contested decision on the ground that the Commission wrongly interpreted and applied Article 11 of Council Regulation No 2200/96 [2] in finding that the French Government had failed to observe the conditions laid down in that provision for the recognition of producers' organisations in the fruit and vegetable sector.

[1] Notified under document number C(2007) 4477, OJ 2007 L 261, p. 28.

[2] Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables (OJ 1996 L 297, p. 1)

Action brought on 22 November 2007 — Ryanair v Commission

(Case T-433/07)

(2008/C 22/93)

Language of the case: English

Parties

Applicant: Ryanair Ltd (Dublin, Ireland) (represented by: E. Vahida, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— To declare in accordance with Article 232 EC that the Commission has failed to act pursuant to its obligations under the EC Treaty by not having defined a position with respect to the applicant's complaint lodged with the Commission on 22 December 2006 followed by a letter of formal notice of 2 August 2007;

— to order the Commission to pay the entire costs, including the costs incurred by the applicant in the proceedings even if, following the bringing of the action, the Commission takes action which in the opinion of the Court removes the need to give a decision or if the Court dismisses the application as inadmissible;

— to take such further action as the Court may deem appropriate.

Pleas in law and main arguments

The applicant claims that the Commission has failed to act by not having defined its position, after having been invited to do so, under Article 232 EC, on the basis of the applicant's complaint filed on 22 December 2006, regarding unlawful aid granted by Greece to Olympic Airlines and Olympic Airways Services ('OA/OAS') following an arbitration ruling of the Greek Supreme Court, ordering the Greek State to pay OA/OAS EUR 563 million for allegedly unpaid services and the cost of relocation to Athens' new airport.