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(Announcements)

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COURT OF JUSTICE

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 30 June 2014 — Confederazione Generale Italiana del Lavoro (CGIL), Istituto Nazionale Confederale Assistenza (INCA) v Presidenza del Consiglio dei Ministri, Ministero dell'Interno, Ministero dell'Economia e delle Finanze

(Case C-309/14)

(2014/C 339/02)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Confederazione Generale Italiana del Lavoro (CGIL),

Istituto Nazionale Confederale Assistenza (INCA)

Defendants: Presidenza del Consiglio dei Ministri,

Ministero dell'Interno,

Ministero dell'Economia e delle Finanze

Question referred

Do the principles laid down in Council Directive 2003/109/EC ([1]) as subsequently amended and supplemented, preclude rules of national law, such as those laid down in Article 5(2-ter) of Legislative Decree No 286 of 25 July 1998, in that they provide that 'the application for the issue and the renewal of the residence permit shall be subject to the payment of a fee, the amount of which shall be set at a minimum of EUR 80 and a maximum of EUR 200 by joint decree of the Ministry of the Economy and Finance and of the Ministry of the Interior which shall also lay down the conditions for the payment …' thereby fixing a minimum amount for the fee equal to around eight times the charge for the issue of a national identity card?

([1]) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

Request for a preliminary ruling from the Krajowa Izba Odwoławcza (Poland) lodged on 7 July 2014 — PARTNER Apelski Dariusz v Zarząd Oczyszczania Miasta

(Case C-324/14)

(2014/C 339/03)

Language of the case: Polish

Referring court

Krajowa Izba Odwoławcza

Parties to the main proceedings

Appellant: PARTNER Apelski Dariusz

Respondent: Zarząd Oczyszczania Miasta

Questions referred

1. Can Article 48(3) 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 ([1]) ('Directive 2004/18/EC'), in conjunction with Article 2 thereof, be interpreted, where it states that 'where appropriate' an economic operator may rely on the capacities of other entities, as covering any situation where a particular economic operator does not have the skills required by the contracting authority and wishes to rely on the capacities of other entities? Or must the indication that an economic operator may rely on the resources of other entities only 'where appropriate' be regarded as a restriction indicating that such reliance may be had only exceptionally and not as a rule when providing evidence of the skills of economic operators in procedures for the award of public contracts?

2. Can Article 48(3) of Directive 2004/18/EC, in conjunction with Article 2 thereof, be interpreted as meaning that reliance by an economic operator on the capacities of other entities in terms of their knowledge and experience 'regardless of the legal nature of the links which it has with them' and 'having at its disposal the resources' of those entities denote that during performance of the contract an economic operator need not have links with those entities or can have very loose and vague links, that is to say, it can perform the contract independently (without the involvement of another entity) or such participation can consist of 'advice', 'consultation', 'training' and the like? Or must Article 48(3) be interpreted as meaning that the entity on whose capacities the economic operator relies must actually and personally perform the contract in so far as its capacities were declared?

3. Can Article 48(3) of Directive 2004/18/EC, in conjunction with Article 2 thereof, be interpreted as meaning that an economic operator which has its own experience but to a lesser degree than it would like to indicate to the contracting authority (for example, insufficient experience to submit a tender for the whole contract) may rely additionally on the capacities of other entities to improve its situation in the procedure?

4. Can Article 48(3) of Directive 2004/18/EC, in conjunction with Article 2 thereof, be interpreted as meaning that in the contract notice or the tendering specifications the contracting authority can (or even must) lay down the rules under which the economic operator may rely on the capacities of other entities, for example in what way the economic operators must participate in the performance of the contract, in what way the capacity of the economic operator and another entity can be combined, and whether the other entity will bear joint and several liability with the economic operator for the due performance of the contract in so far as the economic operator has relied on its capacities?

5. Does the principle of equal and non-discriminatory treatment of economic operators set out in Article 2 of Directive 2004/18/EC allow reliance on the capacities of another entity under Article 48(3) where the capacities of two or more entities which do not have the capacities in terms of knowledge and experience required by the contracting authority are combined?

6. Therefore, does the principle of equal and non-discriminatory treatment of economic operators set out in Article 2 of Directive 2004/18/EC allow an interpretation of Articles 44 and 48(3) of Directive 2004/18/EC to the effect that the conditions for participation in the procedure that are laid down by the contracting authority may be fulfilled just formally for the purposes of participating in the procedure and regardless of the actual skills of the economic operator?

7. Where it is permitted to submit a tender for lots, does the principle of equal and non-discriminatory treatment of economic operators set out in Article 2 of Directive 2004/18/EC allow an economic operator, after the submission of tenders, to state — for example in the context of the supplementing or explaining of documents — to which lot the resources specified by it in order to prove that the conditions for participation in the procedure have been fulfilled are to be assigned?

8. Do the principle of equal and non-discriminatory treatment of economic operators and the principle of transparency set out in Article 2 of Directive 2004/18/EC allow an auction which has been carried out to be annulled and an electronic auction to be repeated where it was carried out improperly in an essential respect, for example where not all economic operators which submitted admissible tenders were invited to participate?

9. Do the principle of equal and non-discriminatory treatment of economic operators and the principle of transparency set out in Article 2 of Directive 2004/18/EC allow a contract to be awarded to an economic operator whose tender was selected as result of such an auction without it being repeated, where it is not possible to determine whether or not the participation of the economic operator which was not taken into consideration would have altered the result of the auction?

10. In interpreting the provisions of Directive 2004/18/EC, is it permitted to use as a guide to interpretation the content of the provisions of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, and of the preamble thereto, even though the period for implementing it has not expired, in so far as it explains certain assumptions and intentions of the EU legislature and is not contrary to Directive 2004/18/EC?

(1) OJ 2004 L 134, p. 114.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 7 July 2014 — Verein für Konsumenteninformation v A1 Telekom Austria AG

(Case C-326/14)

(2014/C 339/04)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Verein für Konsumenteninformation

Defendant: A1 Telekom Austria AG

Question referred

Is the right, provided for in Article 20(2) of the Universal Service Directive (1), for subscribers to withdraw from their contracts without penalty 'upon notice of … modifications in the contractual conditions' also to be provided for in the case where an adjustment to charges derives from contractual conditions which, from the time when the contract is first concluded, provide that future charges are to be adjusted (upwards or downwards) in accordance with changes in an objective consumer price index reflecting movements in the value of money?

(1) Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (Text with EEA relevance) (OJ 2009 L 337, p. 11).

Reference for a preliminary ruling from Court of Session, Scotland (United Kingdom) made on 8 July 2014 — The Scotch Whisky Association and others against The Lord Advocate, The Advocate General for Scotland

(Case C-333/14)

(2014/C 339/05)

Language of the case: English

Referring court

Court of Session, Scotland

Parties to the main proceedings

Applicants: The Scotch Whisky Association and others

Defendants: The Lord Advocate, The Advocate General for Scotland

Questions referred

1) 'On a proper interpretation of EU law respecting the common organisation of the market in wine, in particular Regulation EU N° 1308/2013 ([1]), is it lawful for a member state to promulgate a national measure which prescribes a minimum retail selling price for wine related to the quantity of alcohol in the sale product and which thus departs from the basis of free formation of price by market forces which otherwise underlies the market in wine?'

2) 'In the context of a justification sought under article 36 TFEU, where -

a member state has concluded that it is expedient in the interest of the protection of human health to increase the cost of consumption of a commodity — in casu alcoholic drinks — to consumers, or a section of those consumers; and

that commodity is one in respect of which the member state is free to levy excise duties or other taxes (including taxes or duties based upon alcoholic content or volume or value or a mixture of such fiscal measures),

is it permissible under EU law, and if so under what conditions, for a member state to reject such fiscal methods of increasing the price to the consumer in favour of legislative measures fixing minimum retail prices which distort intra EU trade and competition?'

3) 'Where a court in a member state is called upon to decide whether a legislative measure which constitutes a quantitative restriction on trade incompatible with article 34 TFEU may yet be justified under article 36 TFEU, on the grounds of the protection of human health, is that national court confined to examining only the information, evidence or other materials available to and considered by the legislator at the time at which the legislation was promulgated? And if not, what other restrictions might apply to the national court's ability to consider all materials or evidence available and offered by the parties at the time of the decision of the national court?'

4) 'Where a court in a member state is required, in its interpretation and application of EU law, to examine a contention by the national authorities that a measure otherwise constituting a quantitative restriction within the scope of article 34 TFEU is justified as a derogation, in the interests of the protection of human health, under article 36 TFEU, to what extent is the national court required, or entitled, to form — on the basis of the materials before it — an objective view of the effectiveness of the measure in achieving the aim which is claimed; the availability of at least equivalent alternative measures less disruptive of intra EU competition; and the general proportionality of the measure?'

5) 'In considering (in the context of a dispute as to whether a measure is justified on grounds of the protection of human health under article 36 TFEU) the existence of an alternative measure, not disruptive, or at least less disruptive, of intra EU trade and competition, is it a legitimate ground for discarding that alternative measure that the effects of that alternative measure may not be precisely equivalent to the measure impugned under article 34 TFEU but may bring further, additional benefits and respond to a wider, general aim?'

6) 'In assessing whether a national measure conceded, or found, to be a quantitative restriction in the sense of article 34 TFEU for which justification is sought under article 36 TFEU and in particular in assessing the proportionality of the measure, to what extent may a court charged with that function take into account its assessment of the nature and extent to which the measure offends as a quantitative restriction offensive to article 34?'

([1]) Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007,
OJ L 347, p. 671

Request for a preliminary ruling from the Cour d'appel de Mons (Belgium) lodged on 11 July 2014 — Les Jardins de Jouvence SCRL v Belgian State

(Case C-335/14)

(2014/C 339/06)

Language of the case: French

Referring court

Cour d'appel de Mons

Parties to the main proceedings

Appellant: Les Jardins de Jouvence SCRL

Respondent: Belgian State

Questions referred

1. Is a serviced residence, within the meaning of the Decree of the Council of the Walloon Region of 5 June 1997 relating to retirement homes, serviced residences and day-care centres for persons of 60 or over, [which makes available] for profit individual dwellings designed for one or two persons, comprising a fitted kitchen, a sitting room, a bedroom and a fitted bathroom, thereby enabling residents to lead an independent life, together with a range of optional services supplied against payment, with the aim of making a profit, those services not being available exclusively for the occupants of the serviced residences (… a bar restaurant, … hairdressing and beauty salon, … a physiotherapy room, … occupational therapy activities, … a laundry, … a pharmacy and a blood collection point, a doctor's surgery), a body that is in essence devoted to social wellbeing which carries out supplies 'of services and of goods closely linked to welfare and social security work' for the purposes of Article 13A(1)(g) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ([1]) (now Article 132(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax) ([2])?

2. Is the answer to Question 1 different if the serviced residence in question receives, for the supply of the services in question, subsidies or any other form of advantage or funding from public authorities?

([1]) OJ 1977 L 145, p. 1.
([2]) OJ 2006 L 347, p. 1.

Reference for a preliminary ruling from the Amtsgericht Sonthofen (Germany) lodged on 11 July 2014 — Criminal proceedings against Sebat Ince

(Case C-336/14)

(2014/C 339/07)

Language of the case: German

Referring court

Amtsgericht Sonthofen

Party/parties to the main proceedings

Sebat Ince

Other party: Staatsanwaltschaft Kempten

Questions referred

I. On the first charge (January 2012) and the second charge in so far as it relates to the period up to the end of June 2012:

1(a) Must Article 56 TFEU be interpreted as meaning that criminal prosecution authorities are prohibited from penalising the intermediation of bets on sporting competitions carried on without German authorisation on behalf of betting organisers licensed in other Member States, where such intermediation is subject to the condition that the betting organiser too must hold a German authorisation, but the legal position under statute that is contrary to EU law ('monopoly on sports betting') prohibits the national authorities from issuing an authorisation to non-State-owned betting organisers?

1(b) Is the answer to question 1(a) altered by the fact that, in one of the 15 German *Länder* which jointly established and jointly implement the State monopoly on sports betting, the State authorities maintain, in prohibition or criminal proceedings, that the statutory prohibition on the issue of an authorisation to private suppliers is not applied in the event of an application for an authorisation to operate as an organiser or intermediary in that federal *Land*?

1(c) Must the principles of EU law, in particular the freedom to provide services, and the judgment of the Court of Justice in Case C-186/11 be interpreted as precluding a permanent prohibition or an imposition of penalties (described as 'precautionary') on the cross-border intermediation of bets on sporting competitions, where this is justified on the ground that it '*was not obvious, that is to say recognisable without further examination*' to the prohibiting authority at the time of its decision that the intermediation activity fulfils all the substantive conditions of authorisation (apart from the reservation of such activities to a State monopoly)?

2 Must Directive 98/34/EC ([1]) be interpreted as precluding the imposition of penalties for the intermediation of bets on sporting competitions via a gaming machine, without a German authorisation, on behalf of a betting organiser licensed in another EU Member State, where the interventions by the State are based on a law, not notified to the European Commission, which was adopted by an individual *Land* and has as its content the expired Staatsvertrag zum Glücksspielwesen (State Treaty on Gaming) ('the GlüStV')?

II. The second charge in so far as it relates to the period from July 2012

3 Must Article 56 TFEU, the requirement of transparency, the principle of equality and the EU-law prohibition of preferential treatment be interpreted as precluding the imposition of penalties for the intermediation of bets on sporting competitions, without a German authorisation, on behalf of a betting organiser licensed in another EU Member State in a situation characterised by the Glücksspieländerungsstaatsvertrag (State Treaty amending the provisions on games of chance) ('the GlüÄndStV'), applicable for a period of nine years and containing an 'experimental clause for bets on sporting competitions', which, for a period of seven years, provides for the theoretical possibility of awarding also to non-State-owned betting organisers a maximum of 20 licences, legally effective in all German *Länder*, as a necessary condition of authorisation to operate as an intermediary, where:

(a) the licensing procedure and disputes raised in that connection are managed by the licensing authority in conjunction with the law firm which has regularly advised most of the *Länder* and their lottery undertakings on matters relating to the monopoly on sports betting that is contrary to EU law and represented them before the national courts in proceedings against private betting suppliers, and was entrusted with the task of representing the State authorities in the preliminary ruling proceedings in *Markus Stoß* [*and Others*, C-316/07, C-358/07, C-359/07, C-360/07, C-409/07 and C-410/07, EU:C:2010:504], *Carmen Media* [*Group*, C-46/08, EU:C:2010:505] and *Winner Wetten* [C-409/06, EU:C:2010:503];

(b) the call for tenders for licences published in the Official Journal of the European Union on 8 August 2012 gave no details of the minimum requirements applicable to the proposals to be submitted, the content of the other declarations and evidence required or the selection of the maximum of 20 licensees, such details not having been communicated until after the expiry of the deadline for submission of tenders, in a so-called 'information memorandum' and numerous other documents, and only to tenderers who had qualified for the 'second stage' of the licensing procedure;

(c) eight months after the start of the procedure, the licensing authority, contrary to the call for tenders, invites only 14 tenderers to present their social responsibility and safety policies in person, because these have fulfilled all of the minimum conditions for a licence, but, 15 months after the start of the procedure, announces that not one of the tenderers has provided 'verifiable' evidence that it fulfilled the minimum conditions;

(d) the State-controlled tenderer 'Ods' (Ods Deutschland Sportwetten GmbH), consisting of a consortium of State-owned lottery companies, is one of the 14 tenderers invited to present their proposals to the licensing authority but, because of its organisational links to organisers of sporting events, is probably not eligible for a licence because the law (Paragraph 21(3) of the GlüÄndStV) requires a strict separation of active sport and the bodies organising it from the organisation and intermediation of bets on sporting competitions;

(e) one of the requirements for a licence is to demonstrate 'the lawful origin of the resources necessary to organise the intended offer of sports betting facilities';

(f) the licensing authority and the gaming board that decides on the award of licences, consisting of representatives from the *Länder*, do not avail themselves of the possibility of awarding licences to private betting organisers, whereas State-owned lottery undertakings are permitted to organise bets on sporting competitions, lotteries and other games of chance without a licence, and to operate and advertise them via their nationwide network of commercial betting outlets, for up to a year after the award of any licences?

([1]) Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37).

Request for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium) lodged on 14 July 2014 — Quenon K. SPRL v Citibank Belgium SA, Metlife Insurance SA

(Case C-338/14)

(2014/C 339/08)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: Quenon K. SPRL

Defendants: Citibank Belgium SA, Metlife Insurance SA

Questions referred

1) Must Article 17 of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents ([1]) be interpreted as meaning that the national legislature is authorised to provide that after the termination of the contract, the commercial agent has the right to an indemnity for customers of which the amount must not be greater than the amount of remuneration for one year, and that, if that amount does not cover the whole of the loss actually suffered, damages in the sum of the difference between the amount of loss actually suffered and the amount of that indemnity?

2) More specifically, must Article 17(2)(c) of [Directive 86/653] be interpreted as making the award of damages additional to the indemnity for customers conditional upon the existence of a breach of contract or breach of a quasi-delictual duty of care by the principal which was the cause of the losses claimed, and to the existence of loss which is distinct from that compensated for by the lump sum of the indemnity for customers?

3) If the answer to the latter question is yes, must the breach be something other than the unilateral termination of the contract, such as, for example, giving insufficient notice, the grant of insufficient compensation in respect of notice and customers, the existence of serious reasons on the part of the principal, a breach of the right to terminate the contract or any other types of breaches of, in particular, market practice?

([1]) OJ 1986 L 382, p. 17.

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 14 July 2014 — R. L. Trijber, trading as Amstelboats; other party: College van Burgemeester en Wethouders van Amsterdam

(Case C-340/14)

(2014/C 339/09)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: R.L. Trijber, trading as Amstelboats

Other party: College van Burgemeester en Wethouders van Amsterdam

Questions referred

1. Is the transportation of passengers by open sloop on the internal waterways of Amsterdam, with the main purpose of providing, for payment, tours and rentals for festive occasions, as in the case in the present proceedings, a service to which the provisions of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36) apply, regard being had to the exception set out in Article 2(2)(d) of that directive in respect of services in the field of transport?

2. If the answer to Question 1 is in the affirmative:

   Does Chapter III of Directive 2006/123 apply to purely internal situations, or is the assessment of the question as to whether that chapter applies subject to the case-law of the Court of Justice concerning the Treaty provisions on freedom of establishment and the free movement of services in purely internal situations?

3. If the answer to Question 2 is that the case-law of the Court of Justice concerning the Treaty provisions on freedom of establishment and the free movement of services in a purely internal situation applies to the assessment of the question as to whether Chapter III of Directive 2006/123 is applicable:

   (a) Should the national courts apply the provisions laid down in Chapter III of Directive 2006/123 in a situation such as that in the present case, in which the service provider has not established himself on a cross-border basis and does not offer services on a cross-border basis, but nevertheless relies on those provisions?

   (b) Is it relevant to the answer to that question that the services are expected to be provided mainly to residents of the Netherlands?

   (c) In order to answer that question, is it necessary to determine whether undertakings established in other Member States have shown or will show genuine interest in providing the same or comparable services?

4. Does it follow from Article 11(1)(b) of Directive 2006/123 that, if the number of authorisations is limited by an overriding reason relating to the public interest, the duration of the validity of the authorisations must also be limited, regard being had also to the objective pursued by that directive of securing free access to the market for services, or is this a matter which lies within the discretion of the competent authority of the Member State?

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 14 July 2014 — J. Harmsen; other party: Burgemeester van Amsterdam

(Case C-341/14)

(2014/C 339/10)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: J. Harmsen

Other party: Burgemeester van Amsterdam

Questions referred

1. Does Chapter III of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36) apply to purely internal situations, or is the assessment of the question as to whether that chapter applies subject to the case-law of the Court of Justice concerning the Treaty provisions on freedom of establishment and the free movement of services in purely internal situations?

2. If the answer to Question 1 is that the case-law of the Court of Justice concerning the Treaty provisions on freedom of establishment and the free movement of services in a purely internal situation applies to the assessment of the question as to whether Chapter III of Directive 2006/123 is applicable:

   (a) Should the national courts apply the provisions laid down in Chapter III of Directive 2006/123 in a situation such as that in the present case, in which the service provider has not established himself on a cross-border basis and does not offer services on a cross-border basis, but nevertheless relies on those provisions?

   (b) Is it relevant to the answer to that question that the operator provides services primarily to self-employed prostitutes from Member States other than the Netherlands?

   (c) In order to answer that question, is it necessary to determine whether undertakings established in other Member States have shown or will show genuine interest in establishing a window prostitution business in Amsterdam?

3. To the extent to which the operator is entitled to rely on the provisions of Chapter III of Directive 2006/123, does Article 10(2)(c) of that directive preclude a measure such as that at issue here, whereby an operator of window prostitution businesses is allowed to rent out rooms in shifts only to prostitutes who are able to make themselves understood by the operator in a language which he understands?

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 17 July 2014 — Kyowa Hakko Europe GmbH v Hauptzollamt Hannover

(Case C-344/14)

(2014/C 339/11)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Kyowa Hakko Europe GmbH

Defendant: Hauptzollamt Hannover

Questions referred

1. Do amino acid mixes such as those at issue in the present case (RM0630 and RM0789), from which (in combination with carbohydrates and fats) a foodstuff is manufactured by which a substance that is vital for health and present in normal diet but which can in individual cases trigger an allergic reaction is replaced and, as a result, allergy-induced health impairments can be avoided and existing complaints alleviated, if not cured, constitute medicaments consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses within the meaning of heading 3003 of the Combined Nomenclature ([1])?

   If Question 1 is answered in the negative:

2. Do the amino acid mixes constitute food preparations under heading 2106 of the Combined Nomenclature which, pursuant to note 1(a) to Chapter 30 of the Combined Nomenclature, are excluded from Chapter 30 because they have no prophylactic or therapeutic effect beyond the supply of nutrition?

([1]) Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2013 L 290, p. 1).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 21 July 2014 — Minister delegate for the budget v Marlène Pazdziej

(Case C-349/14)

(2014/C 339/12)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Minister delegate for the budget

Defendant: Marlène Pazdziej

Question referred

Do the provisions of the second paragraph of Article [13] of the Protocol on the Privileges and Immunities of the European Union preclude any account being taken, for the purposes of calculating a tax household's notional income, of the remuneration received by an official or other servant of the European Union who is a member of that tax household, where such taking into account is capable of influencing the amount of taxation payable by that tax household? Alternatively, is it necessary to apply the judgment in Case C-229/98 Vander Zwalmen and Massart ([1]) by analogy, when the purpose of taking such remuneration into account, with a view to the possibility of applying a social measure designed to (a) exempt payment from tax, (b) grant a reduction in the basis of its assessment or, more generally, (c) grant a tax reduction, is only to ascertain whether or not the notional income of the tax household is less than the threshold laid down by national tax law for the grant of the benefit — possibly adjusted by reference to the notional income — of that social measure?

([1]) EU:C:1999:501.

Request for a preliminary ruling from the Juzgado de lo Social No 33 de Barcelona (Spain) lodged on 22 July 2014 — Estrella Rodríguez Sanchez v Consum Sociedad Cooperativa Valenciana

(Case C-351/14)

(2014/C 339/13)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 33 de Barcelona

Parties to the main proceedings

Applicant: Estrella Rodríguez Sanchez

Defendant: Consum Sociedad Cooperativa Valenciana

Questions referred

1. Does the relationship of worker member in a cooperative (*cooperativa de trabajo asociado*) such as that regulated in Article 80 of (Spanish) Law 27/99 on Cooperatives and Article 89 of Law 8/2003 on Cooperatives of the Autonomous Community of Valencia — a relationship which, although characterised by the national legislation and case-law as 'associative' (one of membership), could be considered to amount to an 'employment contract' under Community law — come within the scope of Directive 2010/18 ([1]) relating to the 'revised Framework Agreement on parental leave' as defined in Clause 1(2) of [the Agreement]?

   If that first question is answered in the negative, a second, subsidiary question arises.

2. Must Clause 8(2) of the 'revised Framework Agreement on Parental Leave' (Directive 2010/18), and, more specifically, the provision in accordance with which '[i]mplementation of the provisions of this agreement shall not constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this agreement', be interpreted as meaning that, should a Member State fail to implement Directive 2010/18 expressly, the scope of the protection which that State itself defined in transposing the earlier Directive 96/34 ([2]) may not be reduced?

   Only if the answer to either of those two questions is in the affirmative, Directive 2010/18 being considered applicable to an 'associative-work' relationship such as that of the applicant, will the other questions which follow be justified, for the reasons set out below.

3. Must Clause 6 of the new 'revised Framework Agreement on Parental Leave', incorporated in Directive 2010/18, be interpreted as meaning that the national implementing provision or agreement must incorporate and make explicit the obligations of employers to 'consider' and 'respond to' the requests of its workers for 'changes to … working hours and/or patterns', when returning from parental leave, taking into account both employers' and workers' needs, and that the implementing mandate cannot be understood to be have been complied with by means of national rules — legislative or those of cooperatives — which make the effectiveness of such a right conditional solely upon the mere discretion of the employer as to whether or not to grant such requests?

4. Must it be found that Clause 6 [of the] 'Revised Framework Agreement on Parental Leave' — in the light of Article 3 of Directive [2010/18] and the 'Final provisions' in Clause 8 of the Agreement — has, where there has been a failure to transpose, 'horizontal direct effect' as a result of being a minimum Community standard?

([1]) Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC.
OJ 2010 L 68, p. 13.

([2]) Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.
OJ 1996 L 145, p. 4.

Request for a preliminary ruling from the Juzgado de lo Social No 2 de Terrassa (Spain) lodged on 22 July 2014 — Juan Miguel Iglesias Gutiérrez v Bankia, S.A. and Others

(Case C-352/14)

(2014/C 339/14)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 2 de Terrassa

Parties to the main proceedings

Applicant: Juan Miguel Iglesias Gutiérrez

Defendants: Bankia, S.A., Sección Sindical UGT, Sección Sindical CCOO, Sección Sindical ACCAM, Sección Sindical CSICA, Sección Sindical SATE and Fondo de Garantía Salarial

Questions referred

1. Are Article 56 of the Worker's Statute (Royal legislative decree 1/1995 of 24 March), the Fifth transitional provision of Law 3/2012 of 6 July on urgent measures for the reform of the labour market and Articles 123 and 124.13 of Law 36/2011 of 10 October governing the social courts (Ley Reguladora de la Jurisdicción Social, which refers to the other provisions) contrary to Articles 107 and 108 of the consolidated version of the Treaty on the Functioning of the European Union, inasmuch as they materially increase the compensation authorised by the Decision of the European Commission in the case 'State aid SA.35253 (2012/N) Spain. Restructuring and Recapitalisation of the BFA Group'?

2. Is an interpretation of those national provisions that would allow the court, in the event that the dismissal is held to be fair, to adjust the compensation to the legal minimum provided for under national law contrary to the abovementioned provisions of EU law and to the Decision of the European Commission in the case 'State aid SA.35253 (2012/N) Spain. Restructuring and Recapitalisation of the BFA Group'?

3. Is an interpretation of those national provisions that would allow the court, in the event that the dismissal is held to be unfair, to adjust the compensation to the amounts provided for under the agreement reached in the consultation period, provided that those amounts are greater than the legal minimum but lower than the legal maximum, contrary to the abovementioned provisions of EU law and to the Decision of the European Commission in the case 'State aid SA.35253 (2012/N) Spain. Restructuring and Recapitalisation of the BFA Group'?

Request for a preliminary ruling from the Juzgado de lo Social Terrassa (Spain) lodged on 22 July 2014 — Elisabet Rion Bea v Bankia, S.A. and Others

(Case C-353/14)

(2014/C 339/15)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 2 de Terrassa

Parties to the main proceedings

Applicant: Elisabet Rion Bea

Defendants: Bankia, S.A., Sección Sindical UGT, Sección Sindical CCOO, Sección Sindical ACCAM, Sección Sindical CSICA, Sección Sindical SATE and Fondo de Garantía Salarial

Questions referred

1. Are Article 56 of the Worker's Statute (Royal legislative decree 1/1995 of 24 March), the Fifth transitional provision of Law 3/2012 of 6 July on urgent measures for the reform of the labour market and Articles 123 and 124.13 of Law 36/2011 of 10 October governing the social courts (Ley Reguladora de la Jurisdicción Social, which refers to the other provisions) contrary to Articles 107 and 108 of the consolidated version of the Treaty on the Functioning of the European Union, inasmuch as they materially increase the compensation authorised by the Decision of the European Commission in the case 'State aid SA.35253 (2012/N) Spain. Restructuring and Recapitalisation of the BFA Group'?

2. Is an interpretation of those national provisions that would allow the court, in the event that the dismissal is held to be fair, to adjust the compensation to the legal minimum provided for under national law contrary to the abovementioned provisions of EU law and to the Decision of the European Commission in the case 'State aid SA.35253 (2012/N) Spain. Restructuring and Recapitalisation of the BFA Group'?

3. Is an interpretation of those national provisions that would allow the court, in the event that the dismissal is held to be unfair, to adjust the compensation to the amounts provided for under the agreement reached in the consultation period, provided that those amounts are greater than the legal minimum but lower than the legal maximum, contrary to the abovementioned provisions of EU law and to the Decision of the European Commission in the case 'State aid SA.35253 (2012/N) Spain. Restructuring and Recapitalisation of the BFA Group'?

Appeal brought on 25 July 2014 by the European Commission against the judgment of the General Court (Seventh Chamber) delivered on 13 May 2014 in Case T-458/10 to T-467/10 and T-471/10: Peter McBride and others v European Commission

(Case C-361/14 P)

(2014/C 339/16)

Language of the case: English

Parties

Appellant: European Commission (represented by: A. Bouquet, A. Szmytkowska, Agents, B. Doherty, Barrister)

Other parties to the proceedings: Peter McBride, Hugh McBride, Mullglen Ltd, Cathal Boyle, Thomas Flaherty, Ocean Trawlers Ltd, Patrick Fitzpatrick, Eamon McHugh, Eugene Hannigan, Larry Murphy and Brendan Gill

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union (Seventh Chamber) delivered on 13 May 2014 in Joined cases T-458/10 to T-467/10 and T-471/10 Peter McBride and others v European Commission

— reject the annulment action, and in any case the first plea

— or in the alternative, refer the case back to the General Court of the European Union for adjudication on the pleas raised before it on which the Court of Justice of the European Union has not ruled, and

— order the applicants at first instance to pay the costs of the appeal and the procedure before the General Court.

Pleas in law and main arguments

The Commission maintains that the judgment under appeal should be set aside on the following grounds:

First, the General Court misinterpreted and misapplied Article 266 of the Treaty on the Functioning of the European Union ('TFEU' or 'the Treaty') in conjunction with Article 263 TFEU and the principle of effectiveness, the principle of conferral of powers, the principle of legal certainty, the principle of continuity of the legal order, the temporal application of law, the principle of legitimate expectations and the principles governing succession of legal rules, insofar as it annulled certain Commission decisions intended to carry out the Commission's obligations under the judgments in Joined Cases T-218/03 to T-241/03, Boyle and others v Commission and Joined Cases C-373/06 P, C-379/06 P and C-382/06 P, Flaherty and others v Commission. The contested judgment finds that the Commission had a duty to take the necessary measures to comply with those judgments but that it had no competence to do so.

Second, the General Court failed to give proper reasons for its judgment and to respond to a central argument of the Commission (as well as a question about admissibility in one case). It thus breached Article 36 of the Statute of the Court of Justice and Article 81 of the Rules of Procedure of the General Court.

Request for a preliminary ruling from the Amtsgericht Rüsselsheim (Germany) lodged on 28 July 2014 — Annette Lorch, Kurt Lorch v Condor Flugdienst GmbH

(Case C-364/14)

(2014/C 339/17)

Language of the case: German

Referring court

Amtsgericht Rüsselsheim

Parties to the main proceedings

Applicants: Annette Lorch, Kurt Lorch

Defendant: Condor Flugdienst GmbH

Questions referred

1. Must the extraordinary circumstance within the meaning of Article 5(3) of Regulation No 261/2004 ([1]) relate directly to the booked flight?

2. If the first question is to be answered in the negative, how many earlier flights involving the aircraft to be used for the scheduled flight are relevant to the existence of an extraordinary circumstance? Is there a time-limit to the consideration of extraordinary circumstances which occur during earlier flights? If so, how is that time-limit to be calculated?

3. If extraordinary circumstances which occur during earlier flights are also relevant to a later flight, must the reasonable measures to be taken by the operating air carrier, in accordance with Article 5(3) of the regulation, relate only to preventing the extraordinary circumstance or also to avoiding a long delay?

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

Appeal brought on 31 July 2014 by Toshiba Corporation against the judgment of the General Court (Third Chamber) delivered on 21 May 2014 in Case T-519/09: Toshiba Corporation v European Commission

(Case C-373/14 P)

(2014/C 339/18)

Language of the case: English

Parties

Appellant: Toshiba Corporation (represented by: J. F. MacLennan, solicitor, A. Schulz, Rechtsanwalt, J. Jourdan, and P. Berghe, avocats)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— Set aside the judgment of the General Court of 21 May 2014 in Case T-519/09 Toshiba Corporation v European Commission insofar as it rejected Toshiba's claim for annulment of Articles 1 and 2 of the Decision of the European Commission in case COMP/39.129 — Power Transformers and annul the Decision;

— Alternatively, refer the case back to the General Court for determination in accordance with the judgment of the Court of Justice as to points of law; and, in any event

— Award Toshiba its costs, including its costs in the proceedings before the General Court.

Pleas in law and main arguments

The applicant challenges the judgment of the General Court of 21 May 2014 in Case T-519/09 Toshiba Corporation v European Commission (the 'Contested Judgment'), in which Toshiba Corporation ('Toshiba') applied for the annulment of a decision of the European Commission in case COMP/39.129 — Power Transformers. In the judgment under appeal, the General Court dismissed Toshiba's application on all grounds and ordered Toshiba to pay the costs. In the present appeal, Toshiba submits that the General Court committed the following errors of law:

— First plea: Toshiba submits that the General Court applied the wrong legal test when considering that the Japanese manufacturers of power transformers were potential competitors on the EEA market (1) on the ground that barriers to entry on the EEA market were not insurmountable and (2) on the basis of the existence of the Gentlemen's Agreement, instead it should have verified if the Japanese producers had real concrete possibilities to enter the EEA market and that such an entry was an economically viable strategy. In the absence of potential competition between Japanese and European producers, the Gentlemen's Agreement could not infringe Article 81 EC and the Commission lacked jurisdiction to pursue a case. The Contested Judgment and Contested Decision should therefore be annulled as regards Toshiba.

— Second plea: Toshiba submits that the General Court distorted the content of a letter in which another party to the proceedings stated that it would not challenge the Commission's findings. The Commission considered that the letter superseded that party's previous statements confirming that it had not made any sales in the EEA. However, this is a distortion of the evidence on which the General Court relies to find that the barriers to entry on the EEA market were not insurmountable. Toshiba therefore submits that the Contested Judgment and Contested Decision should be annulled.

— Third plea: Toshiba submits that the General Court gave contradictory reasoning, applied the wrong legal test for public distancing and violated the principle of personal liability by considering that Toshiba's argument regarding its non-participation in the 2003 Zurich meeting was 'ineffective'. The Contested Judgment and Contested Decision should therefore be annulled in so far as they conclude that Toshiba continued to participate in the Gentlemen's Agreement until May 2003.

— Fourth plea: Toshiba submits that the General Court gave the wrong interpretation to paragraph 18 of the Fining Guidelines in applying global market shares as a proxy for the parties' weight in the infringement. The Contested Judgment and Contested Decision should therefore be annulled in so far as they calculate Toshiba's fine on the basis of Toshiba's worldwide market share and Toshiba's fine should be reduced accordingly.

GENERAL COURT

Order of the General Court of 5 May 2014 — BTL Diffusion v OHIM — dm-drogerie markt (babyTOlove)

(Case T-518/11) ([1])

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

(2014/C 339/19)

Language of the case: English

Parties

Applicant: BTL Diffusion (St Cloud, France) (represented by: A. Berendes, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: K. Klüpfel and D. Botis, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: dm-drogerie markt GmbH & Co. KG (Karlsruhe, Germany) (represented by: C. Mellein and B. Beinert, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 8 July 2011 (Case R 883/2010-2) concerning opposition proceedings between dm-drogerie markt GmbH and BTL Diffusion.

Operative part of the order

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

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

([1]) OJ C 355, 3.12.2011.

Order of the General Court of 3 July 2014 — Stance v OHIM — Pokarna (STANCE)

(Case T-206/13) ([1])

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

(2014/C 339/20)

Language of the case: English

Parties

Applicant: Stance, Inc. (San Clemente, United States) (represented by: R. Kunze and G. Würtenberger, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Pokarna Ltd (Secundrabad Andhra Pradesh, India)

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 1 February 2013 (Case R 885/2012-5) concerning opposition proceedings between Pokarna Ltd and Stance, Inc.

Operative part of the order

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

2. *The applicant shall bear its own costs and shall pay the costs incurred by the defendant.*

([1]) OJ C 171, 15.6.2013.

Order of the General Court of 18 June 2014 — NumberFour v OHIM — Inaer Helicópteros (ENFORE)

(Case T-478/13) ([1])

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

(2014/C 339/21)

Language of the case: English

Parties

Applicant: NumberFour AG (Berlin, Germany) (represented by: C. Götz, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Inaer Helicópteros, SA (Mutxamel, Spain) (represented by: C. Giner Mas and R. Rodriguez Zaragoza, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 23 May 2013 (Case R 1000/2012-5), relating to opposition proceedings between NumberFour AG and Inaer Helicópteros, SA

Operative part of the order

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

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

([1]) OJ C 344, 23.11.2013.

Order of the General Court of 17 July 2014 — The Directv Group v OHIM — Bolloré (DIRECTV)

(Case T-718/13) ([1])

(Community trade mark — Application for revocation — Withdrawal of the application for revocation — No need to adjudicate)

(2014/C 339/22)

Language of the case: English

Parties

Applicant: The Directv Group, Inc. (El Segundo, United States) (represented by: F. Valentin, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Bolloré (Ergué Gabéric, France) (represented by: S. Legrand, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 11 October 2013 (Case R 1812/2012-2) concerning cancellation proceedings between Bolloré and The Directv Group, Inc.

Operative part of the order

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

2. *The applicant shall bear its costs, including those incurred by the defendant and the other party to the proceedings.*

([1]) OJ C 71, 8.3.2014.

Order of the General Court of 17 July 2014 — The Directv Group v OHIM — Bolloré (DIRECTV)

(Case T-721/13) ([1])

(Community trade mark — Application for revocation — Withdrawal of the application for revocation — No need to adjudicate)

(2014/C 339/23)

Language of the case: English

Parties

Applicant: The Directv Group, Inc. (El Segundo, United States) (represented by: F. Valentin, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Bolloré (Ergué Gabéric, France) (represented by: S. Legrand, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 10 October 2013 (Case R 1961/2912-2) concerning cancellation proceedings between Bolloré and The Directv Group, Inc.

Operative part of the order

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

2. *The applicant shall bear its costs, including those incurred by the defendant and the other party to the proceedings.*

([1]) OJ C 112, 14.4.2014.

Action brought on 16 July 2014 — Sheraton International IP v OHIM — Staywell Hospitality Group (PARK REGIS)

(Case T-536/14)

(2014/C 339/24)

Language in which the application was lodged: English

Parties

Applicant: Sheraton International IP LLC (Stamford, United States) (represented by: E. Armijo Chávarri, lawyer)

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

Other party to the proceedings before the Board of Appeal: Staywell Hospitality Group Pty Ltd (Sydney, Australia)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 April 2014 given in joined Cases R 240/2013-5 and R 303/2013-5;

— Order the defendant to pay the costs of proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark containing the verbal elements 'PARK REGIS' for services in Classes 35, 36 and 43 — Community trade mark application No 9 488 933

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

Mark or sign cited in opposition: CTM registrations, International trade mark registrations and well-known mark 'ST REGIS'

Decision of the Opposition Division: Upheld the opposition in part

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) CTMR.

Action brought on 21 July 2014 — Grupo Bimbo v OHIM (Form of round sandwich bread)

(Case T-542/14)

(2014/C 339/25)

Language of the case: Spanish

Parties

Applicant: Grupo Bimbo, SAB de CV (Mexico, Mexico) (represented by: N. Fernández Fernández-Pacheco, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 May 2014 in Case R 1911/2013-4, because it is unlawful and infringes the legal provisions in force concerning the Community trade mark; deliver a judgment in accordance with the claims set out in the application, whether on the basis of the intrinsic distinctiveness of the three-dimensional mark applied for or the distinctiveness acquired by use, upholding the present action and ordering the registration of the application for a three-dimensional Community trade mark No 11 747 987, for goods in class 30 of the International Classification, on the grounds that it is lawful and admissible;

— once the present action has been upheld and the trade mark in question has been registered, order the party opposing that claim to pay the costs of the proceedings and to reimburse the appeal fees paid to OHIM.

Pleas in law and main arguments

Community trade mark: Three-dimensional mark in the form of round sandwich bread for goods in class 30 — Community trade mark application No 11 747 987

Decision of the examiner: Application dismissed

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 7(1)(b) of Regulation No 207/2009

Action brought on 22 July 2014 — provima Warenhandels v OHIM — Renfro (HOT SOX)

(Case T-543/14)

(2014/C 339/26)

Language in which the application was lodged: German

Parties

Applicant: provima Warenhandels GmbH (Bielefeld, Germany) (represented by: J. Croll and H. Prange, lawyers)

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

Other party to the proceedings before the Board of Appeal: Renfro Corp. (Mount Airy, United States)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 May 2014 in Case R 1859/2013-2 concerning the international trade mark in the European Union No 0962191 and to alter it to the effect that the appeal is well founded and the application for a declaration of invalidity is granted;

— Order the defendant and, where appropriate, the other party to the proceedings before the Board of Appeal to pay the costs including those incurred in the course of the appeal proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: International registration of the word mark 'HOT SOX' — International registration No 962 191

Proprietor of the Community trade mark: Renfro Corp.

Applicant for the declaration of invalidity of the Community trade mark: provima Warenhandels GmbH

Grounds for the application for a declaration of invalidity: Absolute grounds for invalidity under Article 52(1)(a) in conjunction with Article 7(1)(b) and (c) of Regulation No 207/2009

Decision of the Cancellation Division: Rejection of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law:

— Infringement of Article 158 in conjunction with Article 52(1)(a) and Article 7(1)(c) of Regulation No 207/2009

— Infringement of Article 158 in conjunction with Article 52(1)(a) and Article 7(1)(b) of Regulation No 207/2009

Action brought on 18 July 2014 — Société des Produits Nestlé v OHIM — Terapia (ALETE)

(Case T-544/14)

(2014/C 339/27)

Language in which the application was lodged: German

Parties

Applicant: Société des Produits Nestlé SA (Vevey, Switzerland) (represented by: A. Jaeger-Lenz, A. Lambrecht and S. Cobet-Nüse, lawyers)

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

Other party to the proceedings before the Board of Appeal: Terapia SA (Cluj Napoca, Romania)

Form of order sought

The applicant claims that the Court should:

— Alter the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 May 2014 in Case R 1128/2013-4 in such a way that the opposition is rejected;

— In the alternative, annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 May 2014 in Case R 1128/2013-4;

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Société des Produits Nestlé SA

Community trade mark concerned: The word mark 'ALETE' for goods in Classes 5, 29, 30 and 32 — Community trade mark application No 10 388 379

Proprietor of the mark or sign cited in the opposition proceedings: Terapia SA

Mark or sign cited in opposition: The national word mark 'ALETA' for goods and services in Classes 5 and 35

Decision of the Opposition Division: Opposition upheld

Decision of the Board of Appeal: Appeal dismissed

Pleas in law:

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

— Infringement of Article 63 in conjunction with Rule 20(7)(c) of Regulation No 2868/95

— Infringement of Articles 63(2), 75 and 76 of Regulation No 207/2009

Action brought on 18 July 2014 — GEA Group v OHIM (engineering for a better world)

(Case T-545/14)

(2014/C 339/28)

Language of the case: German

Parties

Applicant: GEA Group AG (Düsseldorf, Germany) (represented by J. Schneiders, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 2 June 2014 in Case R 303/2014-4;

— order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'engineering for a better world' for goods and services in Classes 6, 7, 9, 11, 35, 37, 39, 41 and 42 — application for registration of a Community trade mark No 12 034 807

Decision of the Examiner: Rejection of the application for registration

Decision of the Board of Appeal: Dismissal of the appeal

Plea in law: Infringement of Article 7(1)(b) of Regulation No 207/2009

Action brought on 25 July 2014 — Messi Cuccittini v OHIM — J.M.-E.V. e hijos (MESSI)

(Case T-554/14)

(2014/C 339/29)

Language in which the application was lodged: Spanish

Parties

Applicant: Lionel Andrés Messi Cuccittini (Barcelona, Spain) (represented by: J. L. Rivas Zurdo and M. Toro Gordillo, lawyers)

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

Other party to the proceedings before the Board of Appeal: J.M.-E.V. e hijos, SRL (Granollers, Spain)

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the First Board of Appeal of OHIM of 23 April 2014 in Case R 1553/2013-1, in which it dismissed the applicant's appeal and affirmed the decision of the Opposition Division upholding Opposition No B 1 938 458 and rejecting in part Community trade mark application No 10 181 154 'MESSI' (figurative);

— order the party or parties opposing the action to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Figurative mark including the word element 'MESSI' for goods in classes 3, 9, 14, 16, 25 and 28 — Community trade mark application No 10 181 154

Proprietor of the mark or sign cited in the opposition proceedings: the other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Community word marks 'MASSI' for goods in classes 9, 25 and 28

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 28 July 2014 — BrandGroup v OHIM — Brauerei S. Riegele, Inh. Riegele (SPEZOOMIX)

(Case T-557/14)

(2014/C 339/30)

Language in which the application was lodged: German

Parties

Applicant: BrandGroup GmbH (Bechtsrieth, Germany) (represented by: T. Raible, lawyer)

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

Other party to the proceedings before the Board of Appeal: Brauerei S. Riegele, Inh. Riegele KG (Augsburg, Germany)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 May 2014 in Case R 941/2013-1;

— order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and the Brauerei S. Riegele, Inh. Riegele KG to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: BrandGroup GmbH

Community trade mark concerned: The word mark 'SPEZOOMIX' for goods in Classes 32 and 33 — Community trade mark application No 9 913 617

Proprietor of the mark or sign cited in the opposition proceedings: Brauerei S. Riegele, Inh. Riegele KG

Mark or sign cited in opposition: International and Community word marks 'Spezi', international and Community figurative marks containing the word 'Spezi', and the national word mark 'Ein Spezi muß dabei sein' for goods in Class 32

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Annulment of the decision of the Opposition Division and rejection in its entirety of the mark applied for

Plea in law: Infringement of Article 8(1)(b) and Article 78(5) of Regulation No 207/2009

Action brought on 1 August 2014 — VSM Geneesmiddelen v Commission

(Case T-578/14)

(2014/C 339/31)

Language of the case: English

Parties

Applicant: VSM Geneesmiddelen BV (Alkmaar, Netherlands) (represented by: U. Grundmann, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Declare that the Commission has unlawfully failed to initiate the assessment of Health Claims on Botanical Substances by European Food Safety Authority for the Procedure foreseen by Article 13 Section 3 of the Regulation (EC) 1924/2006 ([1]) since 01/08/2014; and

— in the alternative, annul the decision, allegedly contained in the Commission's letter of 29/06/2014, not to initiate the assessment of Health Claims on botanical substances by EFSA through the procedure foreseen by Article 13 before 01/08/2014.

Pleas in law and main arguments

In support of the action, the applicant submits that according to Article 13(3) of Regulation (EC) 1924/2006 — Health Claims Regulation ('HCR'), the European Commission was under an obligation to adopt a list of permitting claims of substances used in food at the latest by 31/01/2010. In preparation of the adoption of such list the European Food Safety Authority (EFSA) was commissioned to evaluate claims that had been submitted by the Member States. However, in September 2010 the Commission announced to suspend and review the assessment procedure as regards claims on botanical substances, where upon EFSA ceased to process these claims. The Commission suspended only the assessment procedure on botanical substances, but not the procedure on other, like chemical substances.

The applicant has called upon the European Commission with letter dated 23/04/2014 to instruct EFSA to resume without delay the assessment of health claims on botanical substances used in food, since it is strongly affected by the present legal backlog and uncertainty in the field of Health Claims on botanical substances used in food.

The Commission informed the applicant in its letter dated 19/06/2014 that it had received different concerns from Member States and stakeholders and that it will not initiate the assessment of Health Claims on botanicals at this stage. The applicant sent out a further letter to the Commission, dated 08/07/2014 with setting a deadline for initiation of the assessment of Health Claims on botanicals by EFSA, ending 31/07/2014. The Commission has not answered this letter.

It can thus be concluded that the European Commission failed to establish a complete list of permitted Health Claims on substances used in food as required by Article 13(3) HCR. Article 13 HCR does not only foresee clear timelines but also clearly defined procedures for the adoption of the list on Health Claims on substances used in food. The Regulation does not foresee any discretion for the European Commission to alter the procedural steps nor to extend the timelines.

Additionally, according to Recital 9, the Health Claims Regulation aims at establishing '*general principles applicable to all claims*'. This shows clearly that the legislator did not wish to establish different levels of assessments for specific kinds of substances. Therefore, all considerations taken by the European Commission with regard to a separate regime for the evaluation of claims on botanicals would not only lack any legal basis but would also contradict the overall aims of the Regulation.

([1]) Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ L 404, p. 9)

Action brought on 29 July 2014 — Inditex v OHIM — Ansell (ZARA)

(Case T-584/14)

(2014/C 339/32)

Language in which the application was lodged: Spanish

Parties

Applicant: Industria de Diseño Textil, SA (Inditex) (Arteixo, Spain) (represented by: C. Duch, lawyer)

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

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

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 May 2014 in Case R 1118/2013-2 in so far as it confirmed the revocation for non-use of the Community trade mark 'ZARA' No 112 755 in respect of the following services in Class 39: 'services in relation to the transport and distribution of goods, in particular, articles of clothing, shoes and accessories, perfumery and cosmetics', inasmuch as the Board of Appeal infringed Article 51(1)(a) of Regulation No 207/2009 by making the following errors:

— error of law by the Board of Appeal in regarding the franchisees of Inditex as integral entities of the internal organisation of the company when, in fact, they are legal entities independent of the Inditex Group;

— error in the assessment of the evidence, inasmuch as the Board of Appeal criticises the appellant for failing to adduce evidence of the turnover generated by the supply of transport services for the purposes of proving external use of the mark, and despite the fact that such evidence was adduced in the proceedings;

— order OHIM, and if appropriate, the intervener, to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: Word mark 'ZARA' for services in Classes 39 and 42 — Community trade mark No 112 755

Proprietor of the Community trade mark: Applicant

Party applying for revocation of the Community trade mark: Zainab Ansell and Roger Ansell

Decision of the Cancellation Division: Application for revocation granted

Decision of the Board of Appeal: Appeal dismissed

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

Action brought on 14 August 2014 — Industrias Tomás Morcillo v OHIM — Aucar Trailer (Polycart A Whole Cart Full of Benefits)

(Case T-613/14)

(2014/C 339/33)

Language in which the application was lodged: Spanish

Parties

Applicant: Industrias Tomás Morcillo, SL (Albuixech, Spain) (represented by: A. Sanz-Bermell y Martínez, lawyer)

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

Other party to the proceedings before the Board of Appeal: Aucar Trailer, SL (Premia de Mar, Spain)

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 May 2014 in Case R 1735/2012-1 and, accordingly, dismiss the opposition brought by Aucar Trailer S.L., allowing the grant of Community trade mark No 9 690 314 'Polycart A Whole Cart Full of Benefits' in respect of the goods applied for pursuant to the limitation of 16 November 2012, and dismissing the opposition brought against the same;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Figurative mark with word elements 'Polycart A Whole Cart Full of Benefits' for goods in Classes 12, 17 and 20 — Community trade mark application No 9 690 314

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Figurative mark with word element 'POLICAR' for goods and services in Classes 12, 35 and 37

Decision of the Opposition Division: Opposition upheld

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 8 of Regulation No 207/2009

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