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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 22 October 2015 (request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo No 6 de Bilbao — Spain) — Grupo Hospitalario Quirón SA v Departamento de Sanidad del Gobierno Vasco, Instituto de Religiosas Siervas de Jesús de la Caridad

(Case C-552/13) ([1])

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(2015/C 414/02)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo No 6 de Bilbao

Parties to the main proceedings

Applicant: Grupo Hospitalario Quirón SA

Defendants: Departamento de Sanidad del Gobierno Vasco, Instituto de Religiosas Siervas de Jesús de la Caridad

Operative part of the judgment

Article 23(2) 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 precludes a requirement, such as that at issue in the main proceedings, expressed as a technical specification in public procurement notices relating to the provision of health services, whereby the medical services that are the subject of the calls for tenders must be provided by private hospital establishments situated exclusively within a given municipality, which is not necessarily that in which the patients concerned by those services reside, where that requirement involves the automatic exclusion of tenderers who cannot provide those services in such an establishment situated within that municipality but who satisfy all the other conditions of those calls for tenders.

([1]) OJ C 24, 25.1.2014.

Judgment of the Court (First Chamber) of 22 October 2015 (request for a preliminary ruling from the Bundespatentgericht — Germany) — BGW Beratungs-Gesellschaft Wirtschaft mbH, formerly BGW Marketing- & Management-Service GmbH v Bodo Scholz

(Case C-20/14) ([1])

(Reference for a preliminary ruling — Trade marks — Directive 2008/95/EC — Further grounds for refusal or invalidity — Word mark — Same letter sequence as an earlier trade mark — Addition of a descriptive word combination — Existence of a likelihood of confusion)

(2015/C 414/03)

Language of the case: German

Referring court

Bundespatentgericht

Parties to the main proceedings

Applicant: BGW Beratungs-Gesellschaft Wirtschaft mbH, formerly BGW Marketing- & Management-Service GmbH

Defendant: Bodo Scholz

Operative part of the judgment

Article 4(1)(b) of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that, in the case of identical or similar goods and services, there may be a likelihood of confusion on the part of the relevant public between an earlier mark consisting of a letter sequence, which is distinctive and is the dominant element in that mark of average distinctiveness, and a later mark which reproduces that letter sequence and to which is added a descriptive combination of words, the initial letters of which correspond to the letters of that sequence, with the result that that sequence is perceived by that public as the acronym of that combination of words.

([1]) OJ C 129, 28.4.2014.

Judgment of the Court (Fifth Chamber) of 22 October 2015 (request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas — Lithuania) — 'Sveda' UAB v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

(Case C-126/14) ([1])

(Reference for a preliminary ruling — VAT — Directive 2006/112/EC — Article 168 — Right of deduction — Deduction of input VAT on the acquisition or production of capital goods — Recreational path directly intended for use by the public free of charge — Use of the recreational path as a means of carrying out taxed transactions)

(2015/C 414/04)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Applicant: 'Sveda' UAB

Defendant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Third party: Klaipėdos apskrities valstybinė mokesčių inspekcija

Operative part of the judgment

Article 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as granting, in circumstances such as those in the main proceedings, a taxable person the right to deduct the input value added tax paid for the acquisition or production of capital goods, for the purposes of a planned economic activity related to rural and recreational tourism, which are (i) directly intended for use by the public free of charge, and may (ii) enable taxed transactions to be carried out, provided that a direct and immediate link is established between the expenses associated with the input transactions and an output transaction or transactions giving rise to the right to deduct or with the taxable person's economic activity as a whole, which is a matter for the referring court to determine on the basis of objective evidence.

([1]) OJ C 175, 10.6.2014.

Judgment of the Court (Second Chamber) of 22 October 2015 (request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — 'EasyPay' AD, 'Finance Engineering' AD v Ministerski savet na Republika Bulgaria, Natsionalen osiguritelen institut

(Case C-185/14) ([1])

(Reference for a preliminary ruling — Money order service — Directive 97/67/EC — Scope — National legislation granting an exclusive right to provide a money order service — State aid — Economic activity — Services of general economic interest)

(2015/C 414/05)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicants: 'EasyPay' AD, 'Finance Engineering' AD

Defendants: Ministerski savet na Republika Bulgaria, Natsionalen osiguritelen institut

Operative part of the judgment

1. *Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008, must be interpreted as meaning that a money order service by which the sender, in this case the State, transfers sums of money to a beneficiary through the postal operator entrusted with providing the universal postal service does not fall within the scope of that directive.*

2. *Article 107(1) TFEU must be interpreted as meaning that, if the activity of money order operations enabling the payment of retirement pensions constitutes an economic activity, the grant by a Member State of an exclusive right to pay retirement pensions by money order to an undertaking such as that at issue in the main proceedings is not, however, caught by that provision, in so far as that service constitutes a service of general economic interest, the remuneration for which represents compensation for the services carried out by that undertaking to discharge its public service obligation.*

(1) OJ C 194, 24.6.2014.

Judgment of the Court (Second Chamber) of 22 October 2015 — AC Treuhand AG v European Commission

(Case C-194/14 P) (1)

(Appeal — Competition — Agreements, decisions and concerted practices — European tin stabiliser and ESBO/esters heat stabiliser markets — Article 81(1) EC — Scope — Consultancy firm not operating on the relevant markets — Definition of 'agreement between undertakings' and 'concerted practice' — Calculation of the amount of fines — The 2006 Guidelines on the method of setting fines — Unlimited jurisdiction)

(2015/C 414/06)

Language of the case: German

Parties

Appellant: AC Treuhand AG (represented by: C. Steinle, I. Bodenstein and C. von Köckritz, Rechtsanwälte)

Other party to the proceedings: European Commission (represented by: H. Leupold, F. Ronkes Agerbeek and R. Sauer, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

2. *Orders AC-Treuhand AG to pay the costs.*

(1) OJ C 184, 16.6.2014.

Judgment of the Court (Fourth Chamber) of 22 October 2015 (request for a preliminary ruling from the Handelsgericht Wien — Austria) — Thomas Cook Belgium NV v Thurner Hotel GmbH

(Case C-245/14) (1)

(Reference for a preliminary ruling — Area of freedom, security and justice — Regulation (EC) No 1896/2006 — European order for payment procedure — Late statement of opposition — Article 20(2) — Application for review of the European order for payment — Objection to the jurisdiction of the court of origin — European order for payment wrongly issued having regard to the requirements laid down in the regulation — Not 'clearly' wrongly issued — No 'exceptional' circumstances)

(2015/C 414/07)

Language of the case: German

Referring court

Handelsgericht Wien

Parties to the main proceedings

Applicant: Thomas Cook Belgium NV

Defendant: Thurner Hotel GmbH

Operative part of the judgment

Article 20(2) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, as amended by Commission Regulation (EU) No 936/2012 of 4 October 2012, must be interpreted as precluding, in circumstances such as those at issue in the main proceedings, a defendant on whom a European order for payment has been served in accordance with that regulation from being entitled to apply for a review of that order by claiming that the court of origin incorrectly held that it had jurisdiction on the basis of allegedly false information provided by the claimant in the application form.

([1]) OJ C 303, 8.9.2014.

Judgment of the Court (Fifth Chamber) of 22 October 2015 (request for a preliminary ruling from the Högsta förvaltningsdomstolen — Sweden) — Skatteverket v David Hedqvist

(Case C-264/14) ([1])

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Articles 2(1)(c) and 135(1)(d) to (f) — Services for consideration — Transactions to exchange the 'bitcoin' virtual currency for traditional currencies — Exemption)

(2015/C 414/08)

Language of the case: Swedish

Referring court

Högsta förvaltningsdomstolen

Parties to the main proceedings

Applicant: Skatteverket

Defendant: David Hedqvist

Operative part of the judgment

1. *Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that transactions such as those at issue in the main proceedings, which consist of the exchange of traditional currency for units of the 'bitcoin' virtual currency and vice versa, in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients, constitute the supply of services for consideration within the meaning of that article.*

2. *Article 135(1)(e) of Directive 2006/112 must be interpreted as meaning that the supply of services such as those at issue in the main proceedings, which consist of the exchange of traditional currencies for units of the 'bitcoin' virtual currency and vice versa, performed in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients, are transactions exempt from VAT, within the meaning of that provision.*

Article 135(1)(d) and (f) of Directive 2006/112 must be interpreted as meaning that such a supply of services does not fall within the scope of application of those provisions.

(1) OJ C 245, 28.7.2014.

Judgment of the Court (Fifth Chamber) of 22 October 2015 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — PPUH Stehcemp sp. j. Florian Stefanek, Janina Stefanek, Jarosław Stefanek v Dyrektor Izby Skarbowej w Łodzi

(Case C-277/14) (1)

(Reference for a preliminary ruling — Taxation — Value added tax — Sixth Directive — Right of deduction — Refusal — Sale by an entity regarded as non-existent)

(2015/C 414/09)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicants: PPUH Stehcemp sp. j. Florian Stefanek, Janina Stefanek, Jarosław Stefanek

Defendant: Dyrektor Izby Skarbowej w Łodzi

Operative part of the judgment

The provisions 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, as amended by Council Directive 2002/38/EC of 7 May 2002, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, by which a taxable person is not allowed to deduct the value added tax due or paid in respect of goods that were delivered to him on the grounds that the invoice was issued by a trader which is to be regarded, in the light of the criteria provided by that legislation, as a non-existent trader, and that it is impossible to determine the identity of the actual supplier of the goods, except where it is established, on the basis of objective factors and without the taxable person being required to carry out checks which are not his responsibility, that that taxable person knew, or should have known, that that transaction was connected with value-added-tax fraud, this being a matter for the referring court to determine.

(1) OJ C 303, 8.9.2014.

Judgment of the Court (Second Chamber) of 21 October 2015 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — New Media Online GmbH v Bundeskommunikationssenat

(Case C-347/14) (1)

(Reference for a preliminary ruling — Directive 2010/13/EU — Concepts of 'programme' and 'audiovisual media service' — Determination of the principal purpose of an audiovisual media service — Comparability of the service to television broadcasting — Inclusion of short videos in a section of a newspaper's website available on the Internet)

(2015/C 414/10)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant: New Media Online GmbH

Respondent: Bundeskommunikationssenat

Operative part of the judgment

1. *The concept of 'programme', within the meaning of Article 1(1)(b) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), must be interpreted as including, under the subdomain of a website of a newspaper, the provision of videos of short duration consisting of local news bulletins, sports and entertainment clips.*

2. *On a proper interpretation of Article 1(1)(a)(i) of Directive 2010/13, assessment of the principal purpose of a service making videos available offered in the electronic version of a newspaper must focus on whether that service as such has content and form which is independent of that of the journalistic activity of the operator of the website at issue, and is not merely an indissociable complement to that activity, in particular as a result of the links between the audiovisual offer and the offer in text form. That assessment is a matter for the referring court.*

([1]) OJ C 329, 22.9.2014.

Judgment of the Court (First Chamber) of 22 October 2015 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Bundesagentur für Arbeit — Familienkasse Sachsen v Tomislaw Trapkowski

(Case C-378/14) ([1])

(Reference for a preliminary ruling — Social security — Regulation (EC) No 883/2004 — Article 67 — Regulation (EC) No 987/2009 — Article 60(1) — Payment of family benefits where parents are divorced — Definition of the 'person concerned' — Law of a Member State providing for the payment of family benefits to the parent who has taken the child into his household — Residence of that parent in another Member State — Failure of that parent to claim family benefits — Possibility of entitlement of the other parent to claim those family benefits)

(2015/C 414/11)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Bundesagentur für Arbeit — Familienkasse Sachsen

Defendant: Tomislaw Trapkowski

Operative part of the judgment

1. *Article 60(1), second sentence, of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems must be interpreted as meaning that the deeming provision included there may lead to the grant of entitlement to family benefits for a person who does not reside in the Member State responsible for paying those benefits where all the other conditions for the grant of those benefits laid down by national law are met, a matter which is for the referring court to determine.*

2. *Article 60(1), third sentence, of Regulation No 987/2009 must be interpreted as meaning that there is no requirement that the parent of the child for whom child benefits are paid, who resides in the Member State obliged to pay those benefits, must be granted entitlement to those benefits on the ground that the other parent, who resides in another Member State, has not applied for them.*

([1]) OJ C 395, 10.11.2014.

Judgment of the Court (Tenth Chamber) of 22 October 2015 (request for a preliminary ruling from the Consiglio di Giustizia amministrativa per la Regione Siciliana — Italy) — Impresa Edilux Srl, as the representative of a temporary joint venture, Società Italiana Costruzioni e Forniture Srl (SICEF) v Assessorato Beni Culturali e Identità Siciliana — Servizio Soprintendenza Provincia di Trapani, Assessorato ai Beni Culturali e dell'Identità Siciliana, UREGA — Sezione provinciale di Trapani, Assessorato delle Infrastrutture e della Mobilità della Regione Siciliana

(Case C-425/14) ([1])

(Reference for a preliminary ruling — Public procurement — Directive 2004/18/EC — Grounds for exclusion from participation in a tendering procedure — Contract falling below the threshold of application of that directive — Fundamental rules of the FEU Treaty — Declaration of acceptance of a legality protocol on combating criminal activity — Exclusion for failure to lodge such a declaration — Whether permissible — Proportionality)

(2015/C 414/12)

Language of the case: Italian

Referring court

Consiglio di Giustizia amministrativa per la Regione Siciliana

Parties to the main proceedings

Applicants: Impresa Edilux Srl, as the representative of a temporary joint venture, Società Italiana Costruzioni e Forniture Srl (SICEF)

Defendants: Assessorato Beni Culturali e Identità Siciliana — Servizio Soprintendenza Provincia di Trapani, Assessorato ai Beni Culturali e dell'Identità Siciliana, UREGA — Sezione provinciale di Trapani, Assessorato delle Infrastrutture e della Mobilità della Regione Siciliana

Other party to the main proceedings: Icogen Srl

Operative part of the judgment

The fundamental rules and general principles of the FEU Treaty, in particular the principles of equal treatment and of non-discrimination and the consequent obligation of transparency, must be interpreted as not precluding a provision of national law under which a contracting authority may provide that a candidate or tenderer be automatically excluded from a tendering procedure relating to a public contract for not having lodged, with its tender, a written acceptance of the commitments and declarations contained in a legality protocol, such as that at issue in the main proceedings, the purpose of which is to prevent organised crime from infiltrating the public procurement sector. However, inasmuch as that protocol contains declarations that the candidate or tenderer is not in a relationship of control or of association with other candidates or tenderers, has not concluded and will not conclude any agreement with other participants in the tendering procedure and will not subcontract any type of tasks to other undertakings participating in that procedure, the lack of such declarations is not to lead to the automatic exclusion of the candidate or tenderer from that procedure.

([1]) OJ C 431, 1.12.2014.

Judgment of the Court (Third Chamber) of 22 October 2015 (request for a preliminary ruling from the Rechtbank Gelderland — Netherlands) — Aannemingsbedrijf Aertssen NV, Aertssen Terrassements SA v VSB Machineverhuur BV, Van Sommeren Bestrating BV, Jos van Sommeren

(Case C-523/14) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 1 — Scope — Complaint seeking to join a civil action to proceedings — Article 27 — Lis pendens — Proceedings brought before a court of another Member State — Ongoing judicial investigation — Article 30 — Time when a court is deemed to be seised)

(2015/C 414/13)

Language of the case: Dutch

Referring court

Rechtbank Gelderland

Parties to the main proceedings

Applicants: Aannemingsbedrijf Aertssen NV, Aertssen Terrassements SA

Defendants: VSB Machineverhuur BV, Van Sommeren Bestrating BV, Jos van Sommeren

Operative part of the judgment

1. *Article 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 a complaint lodged with an investigating magistrate seeking to join a civil action to proceedings falls within the scope of that regulation in so far as its object is to obtain monetary compensation for harm allegedly suffered by the complainant.*

2. *Article 27(1) of Regulation No 44/2001 must be interpreted as meaning that proceedings are brought, within the meaning of that provision, when a complaint seeking to join a civil action to proceedings has been lodged with an investigating magistrate, even though the judicial investigation of the case at issue has not yet been closed.*

3. *Article 30 of Regulation No 44/2001 must be interpreted as meaning that, where a person lodges a complaint seeking to join a civil action to proceedings with an investigating magistrate by means of the lodging of a document which need not, under the applicable national law, be served before that lodging, the time which must be chosen for the purposes of holding that magistrate to be seised is the time when that complaint was lodged.*

(1) OJ C 34, 2.2.2015.

Judgment of the Court (Fourth Chamber) of 21 October 2015 (request for a preliminary ruling from the Varhoven kasatsionen sad — Bulgaria) — Vasilka Ivanova Gogova v Ilia Dimitrov Iliev

(Case C-215/15) (1)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility — Regulation (EC) No 2201/2003 — Scope — Article 1(1)(b) — Attribution, exercise, delegation, restriction or termination of parental responsibility — Article 2 — Concept of parental responsibility — Dispute between parents on travel by their child and the issue of a passport to the child — Prorogation of jurisdiction — Article 12 — Conditions — Acceptance of the jurisdiction of the courts seised — Non-appearance of the defendant — Jurisdiction not contested by the defendant's legal representative appointed by the courts seised of their own motion)

(2015/C 414/14)

Language of the case: Bulgarian

Referring court

Varhoven kasatsionen sad

Parties to the main proceedings

Applicant: Vasilka Ivanova Gogova

Defendant: Ilia Dimitrov Iliev

Operative part of the judgment

1. *An action in which one parent asks the court to remedy the lack of agreement of the other parent to their child travelling outside his Member State of residence and a passport being issued in the child's name is within the material scope of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, even though the decision in that action will have to be taken into account by the authorities of the Member State of which the child is a national in the administrative procedure for the issue of that passport.*

2. *Article 12(3)(b) of Regulation No 2201/2003 must be interpreted as meaning that the jurisdiction of the courts seised of an application in matters of parental responsibility may not be regarded as having been 'accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings' within the meaning of that provision solely because the legal representative of the defendant, appointed by those courts of their own motion in view of the impossibility of serving the document instituting proceedings on the defendant, has not pleaded the lack of jurisdiction of those courts.*

([1]) OJ C 236, 20.7.2015.

Request for a preliminary ruling from the Obvodní soud pro Prahu 6 (Czech Republic) lodged on 26 June 2015 — Marcela Pešková, Jiří Peška v Travel Service a.s.

(Case C-315/15)

(2015/C 414/15)

Language of the case: Czech

Referring court

Obvodní soud pro Prahu 6

Parties to the main proceedings

Applicants: Marcela Pešková, Jiří Peška

Defendant: Travel Service a.s.

Questions referred

1) Is a collision between an aircraft and a bird an event within the meaning of paragraph 22 of the judgment of the Court of Justice in *Wallentin-Hermann*, Case C-549/07, EU:C:2008:771 ('*Wallentin-Hermann*'), or does it constitute extraordinary circumstances within the meaning of recital 14 in the preamble to Regulation (EC) No 261/2004 ([1]) 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 ([2]) ('the Regulation'), or is it impossible to classify it under either of those concepts?

2) If the collision between an aircraft and a bird constitutes extraordinary circumstances within the meaning of recital 14 in the preamble to the Regulation, may preventative control systems established in particular around airports (such as sonic bird deterrents, cooperation with ornithologists, the elimination of spaces where birds typically gather or fly, using light as a deterrent and so on) be considered to be reasonable measures to be taken by the air carrier to avoid such a collision? What in this case constitutes the event within the meaning of paragraph 22 of *Wallentin-Hermann*?

3) If a collision between an aircraft and a bird is an event within the meaning of paragraph 22 of *Wallentin-Hermann*, may it also be considered to be an event within the meaning of recital 14 in the preamble to the Regulation and may, in such a case, the body of technical and administrative measures which an air carrier must implement following a collision between an aircraft and a bird which nevertheless did not result in damage to the aircraft be considered to constitute exceptional circumstances within the meaning of recital 14 in the preamble to the Regulation?

4) If the body of technical and administrative measures taken following a collision between an aircraft and a bird which nevertheless did not result in damage to the aircraft constitutes exceptional circumstances within the meaning of recital 14 in the preamble to the Regulation, is it permissible to require, as reasonable measures, the air carrier to take into consideration, when it plans flights, the risk that it will be necessary to take such technical and administrative measures following a collision between an aircraft and a bird and to make provision for that fact in the flight schedule?

5) How must the obligation on the air carrier to pay compensation, as provided for in Article 7 of the Regulation, be assessed where the delay is caused not only by administrative and technical measures adopted following a collision between the aircraft and a bird which did not result in damage to the aircraft, but also to a significant extent by repairing a technical problem unconnected with that collision?

(1) OJ L 46, 17.2.2004, p. 1.
(2) OJ L 36, 8.2.1991, p. 5.

Appeal brought on 13 July 2015 by Louis Vuitton Malletier against the judgment of the General Court (Second Chamber) delivered on 21 April 2015 in Case T-359/12: Louis Vuitton Malletier v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Nanu-Nana Handelsgesellschaft mbH für Geschenkartikel & Co. KG

(Case C-363/15 P)

(2015/C 414/16)

Language of the case: English

Parties

Appellant: Louis Vuitton Malletier (represented by: P. Roncaglia, G. Lazzeretti, F. Rossi, N. Parrotta, avvocati)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Nanu-Nana Handelsgesellschaft mbH für Geschenkartikel & Co. KG

Form of order sought

The appellant claims that the Court should:

— Annul the judgment of the General Court of the European Union (Second Chamber) of April 21, 2015, in Case T-359/12, served upon the Appellant on April 29, 2015;

— Order OHIM to pay the costs incurred by the Appellant during these proceedings;

— Order Nanu-Nana to pay the costs incurred by the Appellant during these proceedings.

Pleas in law and main arguments

1. By means of the present appeal Louis Vuitton Malletier (hereafter referred to as 'Louis Vuitton' or the 'Appellant") requests that the Court of Justice annul the decision of the General Court of the European Union (Second Chamber) of April 21, 2015, in Case T-359/12 (the 'judgment under appeal'), whereby the General Court dismissed Louis Vuitton application against the decision of the First Board of Appeal of OHIM of May 4, 2012, in Case R 1855/2011-1, which had declared Community trademark registration No. 370445 (figurative) invalid in its entirety, for lack of distinctive character.

2. The present appeal is aimed at showing that the General Court erred in concluding that the provision of Article 7(1)(b) CTM Regulation (1) is applicable to the contested trademark, as well as in concluding that the provisions of Article 7(3) and Article 52(2) CTM Regulation do not apply in the case at issue.

3. Firstly, in upholding the Board of Appeal's decision that had declared the contested trademark invalid for not being inherently distinctive the General Court infringed the rules concerning the burden of proof in invalidity proceedings.

4. In particular, the Appellant maintains that to comply with the principles on the presumption of validity enjoyed by registered Community trademarks and the apportion of the burden of proof in invalidity actions, the General Court should have reversed the challenged decision, on the basis that Nanu-Nana had not met its burden, as it had not been able to demonstrate what the norm and customs of the relevant sector were at the date of filing of the contested trademark and therefore that the contested trademark did not depart significantly from them.

5. Secondly, in requiring that evidence of acquired distinctiveness be provided for each of the European Union Member States the General Court openly infringed the CJEU's ruling in the Lindt case, whereby 'even if it is true (…) that the acquisition by a mark of distinctive character through use must be proved for the part of the European Union in which that mark did not, ab initio, have such character, it would be unreasonable to require proof of such acquisition for each individual Member State' [see decision of May 24, 2012, Chocoladefabriken Lindt & Sprüngli v OHIM, C-98/11 P, EU: C:2012:307, paragraph 62].

6. In particular, the Appellant points out that if the General Court had applied the ruling of the CJEU in the Lindt case correctly, it would have reached the conclusion that the contested trademark had acquired distinctive character through use and, consequently, it would have reversed the Board of Appeal's decision on this point.

7. In light of the above the Appellant requests that the Court of Justice annul the judgment under appeal and order both the OHIM and Nanu-Nana to pay the costs incurred by the Appellant during these proceedings.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark OJ L 78, p. 1.

Appeal brought on 13 July 2015 by Louis Vuitton Malletier against the judgment of the General Court (Second Chamber) delivered on 21 April 2015 in Case T-360/12: Louis Vuitton Malletier v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Nanu-Nana Handelsgesellschaft mbH für Geschenkartikel & Co. KG

(Case C-364/15 P)

(2015/C 414/17)

Language of the case: English

Parties

Appellant: Louis Vuitton Malletier (represented by: P. Roncaglia, G. Lazzeretti, F. Rossi, N. Parrotta, avvocati)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Nanu-Nana Handelsgesellschaft mbH für Geschenkartikel & Co. KG

Form of order sought

The appellant claims that the Court should:

— Annul the judgment of the General Court of the European Union (Second Chamber) of April 21, 2015, in Case T-360/12, served upon the Appellant on April 29, 2015;

— Order OHIM to pay the costs incurred by the Appellant during these proceedings;

— Order Nanu-Nana to pay the costs incurred by the Appellant during these proceedings.

Pleas in law and main arguments

1. By means of the present appeal Louis Vuitton Malletier (hereafter referred to as 'Louis Vuitton' or the 'Appellant') requests that the Court of Justice annul the decision of the General Court of the European Union (Second Chamber) of April 21, 2015, in Case T-360/12 (the 'judgment under appeal'), whereby the General Court dismissed Louis Vuitton application against the decision of the First Board of Appeal of OHIM of May 16, 2012, in Case R 1854/2011-1, which had declared Community trademark registration No. 658751 (figurative) invalid in its entirety, for lack of distinctive character.

2. The present appeal is aimed at showing that the General Court erred in concluding that the provision of Article 7(i)(b) CTM Regulation ([1]) is applicable to the contested trademark.

3. In upholding the Board of Appeal's decision that had declared the contested trademark invalid for not being inherently distinctive the General Court infringed the rules concerning the burden of proof in invalidity proceedings.

4. In particular, the Appellant maintains that to comply with the principles on the presumption of validity enjoyed by registered Community trademarks and the apportion of the burden of proof in invalidity actions, the General Court should have reversed the challenged decision, on the basis that Nanu-Nana had not met its burden, as it had not been able to demonstrate what the norm and customs of the relevant sector were at the date of filing of the contested trademark and therefore that the contested trademark did not depart significantly from them.

5. In light of the above the Appellant requests that the Court of Justice annul the judgment under appeal and order both the OHIM and Nanu-Nana to pay the costs incurred by the Appellant during these proceedings.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark OJ L 78, p. 1.

Appeal brought on 12 August 2015 by Pensa Pharma, SA against the judgment of the General Court (Second Chamber) delivered on 3 June 2015 in Case T-544/12: Pensa Pharma, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Ferring BV, Farmaceutisk Laboratorium Ferring A/S

(Case C-442/15 P)

(2015/C 414/18)

Language of the case: English

Parties

Appellant: Pensa Pharma, SA (represented by: R. Kunze, G. Würtenberger, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Ferring BV, Farmaceutisk Laboratorium Ferring A/S

Form of order sought

The appellant claims that the Court should:

— annul the judgement of the General Court of 3 June 2015 in joint cases T-544/12 and T-546/12,

— grant the action for annulment brought by Pensa Pharma S.A. against the Board of Appeal's decisions in Case R-1883/2011-5 as well as well as Case R-1884/2011-S,

— order the Office and the Other Parties to bear the costs of the proceedings.

Pleas in law and main arguments

1. The Appellant claims that the General Court committed a profound legal error in rejecting the Appellant's claim that the submissions made during the hearing before the General Court be admissible as they were not new but merely expanding the legal arguments previously submitted to the Board of Appeal as well as the General Court.

2. In addition the Court failed to take account of the fact that the Board of Appeal had failed to state its reasons why it confirmed the Cancellation Division's decision to grant the Respondent's application for invalidity in the consolidated proceedings initially consisting of four separate applications and to have the Appellant bear the cost of all four proceedings brought before the Office despite the fact that both consolidated decisions were only based on rights invoked and/or owned by one of the two respective applicants.

3. Moreover the General Court's decision under review is also based on a distortion of facts and evidence as well as on a misconception and misappropriation of the General Court's jurisdiction in as much as it had failed to properly apply the facts available and the law within the ambit of the second plea in law, i.e. the infringement of Art. 8 Community Trademark Regulation 207/2009 ([1]) (hereinafter referred as CTMR). Had the General Court adhered to the fundamental principles of law, including the right to fair proceedings as well the right to state reasons in support of a decision, it must have granted the action brought before it. This holds the more as the General Court has confirmed the decisions of the Board of Appeal in full knowledge of the fact that the basis of the decisions, namely the existence of a national Benelux and French trademark, at the time of the decision under appeal before the General Court was neither proven by the Respondent nor were they given. Hence the General Court infringed Article 8 (1) CTMR as well as Article 53 (1) CTMR in that it had applied erroneous legal criteria in determining that the Appellant's trademark registrations were to be cancelled based upon prior Benelux and French trademark registrations.

4. The errors committed are both of procedural as well as substantive law nature. Hence the Appellant will first illustrate the General Court's failure to admit the submissions made at the hearing and secondly set out the reasons why the General Court must have come to the conclusion that the second plea in law raised before it was well-founded on account of an infringement of acknowledged principles of due process of law as well as in light of the facts given.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark OJ L 78, p. 1.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 11 September 2015 — Aeroporto Valerio Catullo di Verona Villafranca SpA v Società per l'Aeroporto Civile di Bergamo-Orio al Serio SpA (SACBO SpA)

(Case C-485/15)

(2015/C 414/19)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Aeroporto Valerio Catullo di Verona Villafranca SpA

Respondent: Società per l'Aeroporto Civile di Bergamo-Orio al Serio SpA (SACBO SpA)

Question referred

Do the principles of the Treaty on European Union of non-discrimination, equal treatment, transparency, advertising and competition preclude provisions of national legislation such as the combined provisions of Article 10 of Law No 537/93, Articles 6, 7, 8 and 17 of Ministerial Decree No 521/1997, Article 17 of Decree Law No 67/97, Article 3(2) of Legislative Decree No 96/2005 and Article 11 of Decree Law No 216/2011 in conjunction with Article 6 of Decree Law No 78/2010, in so far as those national provisions may allow the grant of a forty-year concession for full airport operation to escape award by means of a public tendering procedure?

Request for a preliminary ruling from the Nejvyšší soud České republiky (Czech Republic) lodged on 21 September 2015 — Tommy Hilfiger Licensing LLC and Others v DELTA CENTER a.s.

(Case C-494/15)

(2015/C 414/20)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky

Parties to the main proceedings

Applicants: Tommy Hilfiger Licensing LLC, Urban Trends Trading B.V., RADO Uhren AG, Facton Kft., Lacoste S.A., Burberry Limited

Defendant: DELTA CENTER a.s.

Questions referred

1) Is a person with a lease of premises in a market, who provides stalls and pitches on which stalls may be placed to individual market-traders for their use, an intermediary whose services are used by a third party to infringe an intellectual property right within the meaning of Article 11 of Directive 2004/48/EC ([1]) of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights?

2) Is it possible to impose on a person with a lease of premises in a market, who provides stalls and pitches on which stalls may be placed to individual market-traders for their use, measures, as provided for in Article 11 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, under the same conditions as those formulated by the Court of Justice in its judgment of 12 July 2011 in Case C-324/09 *L'Oréal and Others* v *eBay and Others* with regard to the imposition of measures on the operators of an online marketplace?

([1]) OJ L 157, 30.4.2004, p. 45.

Request for a preliminary ruling from the Vilniaus miesto apylinkės teismas lodged on 22 September 2015 — W. and V. v X.

(Case C-499/15)

(2015/C 414/21)

Language of the case: Lithuanian

Referring court

Vilniaus miesto apylinkės teismas

Parties to the main proceedings

Applicants: W. and V.

Defendant: X.

Question referred

On the basis of Articles 8 to 14 of Council Regulation (EC) No 2201/2003 ([1]) of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, which Member State — that is to say, the Republic of Lithuania or the Kingdom of the Netherlands — has jurisdiction to deal with the case concerning the changes to the place of residence, to the child maintenance amount and to the applicable contact arrangements in respect of the minor child, V., who is habitually resident in the Kingdom of the Netherlands?

([1]) OJ 2003 L 338, p. 1.

Appeal brought on 22 September 2015 by Office for Harmonisation in the Internal Market (Trade Marks and Designs) against the judgment of the General Court (First Chamber) delivered on 15 July 2015 in Case T-24/13: Cactus S.A. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-501/15 P)

(2015/C 414/22)

Language of the case: English

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, agent)

Other party to the proceedings: Cactus S.A.

Form of order sought

The appellant claims that the Court should:

— Uphold the Appeal in its entirety

— Annul the Contested Judgment

— Order Cactus S.A. to pay the costs incurred by the Office.

Pleas in law and main arguments

According to the 'IP Translator' Judgment, the designation of a class heading may cover all the goods or services included in the alphabetical list of this class. However such a designation cannot amount to a claim to the totality of all goods and services of a particular class. The General Court misapplied the 'IP Translator' Judgment and violated Article 28 CTMR ([1]) and Rule 2 CTMIR in equating the coverage of the class heading in class 35 with all the services belonging to this class. Since neither the retail services as such nor the services of 'retailing of natural plants and flowers, grains; fresh fruits and vegetables' are included in the alphabetical list of class 35, the earlier Community trademarks are not protected in respect of such services. The requirement to specify the goods or types of goods to which the retail services relate, which applies to all trademarks including to those filed before the 'Praktiker' Judgment, is a further bar to the General Court's conclusion that the abstract designation of the class heading in class 35 extends to retail services in respect of all possible goods.

The finding that use only of the stylised cactus does not alter the distinctive character of the earlier figurative mark, within the meaning of Article 15(1)(a) CTMR, is vitiated by four errors in law. In basing its conclusion only on the semantic concordance between the logo and the word element, the General Court failed to examine to which extent the word element 'Cactus' was distinctive and important in the earlier composite mark. The General Court failed to have regard to the visual and (possible) phonetic differences between the logo and the composite mark, it wrongly based its finding on the prior knowledge that the public in Luxembourg has of the earlier composite mark and it failed to consider the perception of the European public as a whole.

(1) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark OJ L 78, p. 1.

Request for a preliminary ruling from the Secretario Judicial of the Juzgado de Violencia sobre la Mujer de Terrassa (Spain) lodged on 23 September 2015 — Ramón Margarit Panicello v Pilar Hernández Martínez

(Case C-503/15)

(2015/C 414/23)

Language of the case: Spanish

Referring court

Secretario Judicial of the Juzgado de Violencia sobre la Mujer de Terrassa

Parties to the main proceedings

Applicant: Ramón Margarit Panicello

Defendant: Pilar Hernández Martínez

Questions referred

1. Are Articles 34, 35, 207(2), 207(3) and 207(4) of Law 1/2000 [on Civil Procedure], which govern the administrative procedure for recovery of unpaid fees ('jura de cuentas'), incompatible with Article 47 of the Charter of Fundamental Rights of the European Union (1) in that they preclude the possibility of judicial review? If that is the case:

   In the context of the procedure provided for in Articles 34 and 35 of Law 1/2000, is a Secretario Judicial a 'court or tribunal' for the purposes of Article 267 of the Treaty on the Functioning of the European Union?

2. Are Articles 34 and 35 of Law 1/2000 incompatible with Articles 6(1) and 7(2) of Directive [93/13/EEC (2)] and Articles 6(1)(d), 11 and 12 of Directive 2005/29/EC (3) inasmuch as they preclude any examination *ex officio* of possible unfair terms or unfair commercial practices in contracts concluded between lawyers and natural persons who are acting for purposes which are outside their trade, business or profession?

3. Are Articles 34 and 35 of Law 1/2000 incompatible with Articles 6(1) and 7(2) of, and [point 1(q) of the Annex to], Directive [93/13/EEC] inasmuch as they preclude the production of evidence for the purpose of resolving the dispute in the administrative procedure for recovery of unpaid fees?

(1) OJ 2000 C 364, p. 1.
(2) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).
(3) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22).

Request for a preliminary ruling from the Rechtbank van Koophandel te Gent (Belgium) lodged on 24 September 2015 — Agro Foreign Trade & Agency Ltd v Petersime NV

(Case C-507/15)

(2015/C 414/24)

Language of the case: Dutch

Referring court

Rechtbank van Koophandel te Gent

Parties to the main proceedings

Applicant: Agro Foreign Trade & Agency Ltd

Defendant: Petersime NV

Question referred

Is the Belgian Handelsagentuurwet, (1) which transposes the Commercial Agency Directive into Belgian national law, in accordance with that Directive and/or the provisions of the Association Agreement which has as its express aim the accession of Turkey to the European Union and/or the obligations between Turkey and the European Union to eliminate restrictions with regard to the free movement of services between them, when that Belgian Handelsagentuurwet provides that it only applies to commercial agents whose principal place of business is in Belgium, and does not apply when a principal established in Belgium and an agent established in Turkey have explicitly chosen Belgian law?

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

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas lodged on 25 September 2015 in the administrative proceedings for review of legality between Agrodetalė UAB and Lietuvos Respublikos žemės ūkio ministerija

(Case C-513/15)

(2015/C 414/25)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Interested parties: Agrodetalė UAB, Lietuvos Respublikos žemės ūkio ministerija

Questions referred

1. Do the provisions of Directive 2003/37/EC ([1]) of the European Parliament and of the Council of 26 May 2003 on type-approval of agricultural or forestry tractors, their trailers and interchangeable towed machinery, together with their systems, components and separate technical units and repealing Directive 74/150/EEC apply to the supply to the EU market and registration of used or second-hand vehicles manufactured outside the European Union or can Member States regulate the registration of such vehicles in a Member State by special national rules and impose requirements applicable to such registration (for example, the obligation to comply with the requirements of Directive 2003/37/EC)?

2. Can Article 23(1)(b) of Directive 2003/37/EC of the European Parliament and of the Council of 26 May 2003 on type-approval of agricultural or forestry tractors, their trailers and interchangeable towed machinery, together with their systems, components and separate technical units and repealing Directive 74/150/EEC, read in conjunction with Article 2(q) thereof, be interpreted as laying down that the provisions of the directive are applicable to machinery in categories Tl, T2 and T3 manufactured after 1 July 2009?

([1]) OJ 2003 L 171, p. 1.

Request for a preliminary ruling from the cour du travail de Bruxelles (Belgium) lodged on 28 September 2015 — Ville de Nivelles v Rudy Matzak

(Case C-518/15)

(2015/C 414/26)

Language of the case: French

Referring court

Cour du travail de Bruxelles

Parties to the main proceedings

Appellant: Ville de Nivelles

Respondent: Rudy Matzak

Questions referred

1. Must Article 17(3)(c)(iii) of Directive 2003/88/EC concerning certain aspects of the organisation of working time ([1]) be interpreted as enabling Member States to exclude certain categories of firefighters recruited by the public fire services from all the provisions transposing that Directive, including the provision that defines working time and rest periods?

2. Inasmuch as Directive 2003/88 of 4 November 2003 concerning certain aspects of the organisation of working time provides for only minimum requirements, must it be interpreted as not preventing the national legislature from retaining or adopting a less restrictive definition of working time?

3. Taking account of Article 153(5) TFEU and of the objectives of Directive 2003/88 concerning certain aspects of the organisation of working time, must Article 2 of that Directive, in so far as it defines the principal concepts used in the Directive, in particular those of working time and rest periods, be interpreted to the effect that it is not applicable to the concept of working time which serves to determine the remuneration owed in the case of home-based on-call time?

4. Does Directive 2003/88 of 4 November 2003 concerning certain aspects of the organisation of working time prevent home-based on-call time from being regarded as working time when, although the on-call time is undertaken at the home of the worker, the constraints on him during the on-call time (such as the duty to respond to calls from his employer within eight minutes) very significantly restrict the opportunities to undertake other activities?

(1) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

Request for a preliminary ruling from the Tribunale di Bergamo (Italy) lodged on 1 October 2015 — Criminal proceedings against Luca Menci

(Case C-524/15)

(2015/C 414/27)

Language of the case: Italian

Referring court

Tribunale di Bergamo

Party to the main proceedings

Luca Menci

Question referred

Does Article 50 of the Charter of Fundamental Rights of the European Union, interpreted in the light of Article 4 of Protocol No 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the related case-law of the European Court of Human Rights, preclude the possibility of conducting criminal proceedings concerning an act (non-payment of VAT) for which a definitive administrative penalty has been imposed on the defendant?

Request for a preliminary ruling from the Audiencia Provincial de Álava (Spain) lodged on 5 October 2015 — Laboral Kutxa v Esmeralda Martínez Quesada

(Case C-525/15)

(2015/C 414/28)

Language of the case: Spanish

Referring court

Audiencia Provincial de Álava

Parties to the main proceedings

Applicant: Laboral Kutxa

Defendant: Esmeralda Martínez Quesada

Question referred

Is the limitation of the consequences of holding a term to be ineffective because unfair, restricting the effects of restitution of sums paid but not due, by applying it from a particular date instead of from the moment the unfair, void term was first applied, compatible with the principle that unfair terms are not binding, laid down in Article 6(1) of Council Directive 93/13/EEC ([1]) of 5 April 1993 on unfair terms in consumer contracts?

([1]) OJ 1993, L 95, p. 29.

Request for a preliminary ruling from the Conseil d'État (France) lodged on 8 October 2015 — Melitta France SAS and Others v Ministère de l'Écologie, du Développement durable et de l'Énergie

(Case C-530/15)

(2015/C 414/29)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Melitta France SAS, Cofresco Frischhalteprodukte GmbH & Co. KG, Délipapier, Gopack SAS, Industrie Cartarie Tronchetti SpA, Industrie Cartarie Tronchetti Ibérica, SL, Kimberly-Clark SAS, Lucart France, Paul Hartmann AG, SCA Hygiène Products, SCA Tissue France SAS, Group'Hygiène syndicat professionnel

Defendant: Ministère de l'Écologie, du Développement durable et de l'Énergie

Question referred

The Court is asked to decide whether by including 'roll cores' (rolls, tubes, cylinders) around which flexible material, such as paper or plastic film, is wound and sold to consumers in the examples of packaging, Commission Directive 2013/2/EU of 7 February 2013 ([1]) has misconstrued the term 'packaging', as defined in Article 3 of Directive 94/62/EC of 20 December 1994, ([2]) and exceeded the scope of the authorisation granted to the European Commission in respect of its implementing powers.

([1]) Commission Directive 2013/2/EU of 7 February 2013 amending Annex I to Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste (OJ 2013 L 37, p. 10).

([2]) European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10).

Action brought on 23 October 2015 — European Commission v Ireland

(Case C-552/15)

(2015/C 414/30)

Language of the case: English

Parties

Applicant: European Commission (represented by: M. Wasmeier, J. Tomkin, agents)

Defendant: Ireland

The applicant claims that the Court should:

— declare that by levying a full amount of registration tax upon the registration by an Irish resident of a motor vehicle leased or rented in another Member State, without taking account of the duration of the use, where the vehicle is neither intended to be used essentially in Ireland on a permanent basis nor in fact used in that way, and by setting conditions for a refund of this tax which go beyond what is strictly necessary and proportionate, Ireland has failed to fulfil its obligations under Article 56 of the Treaty on the Functioning of the European Union;

— order Ireland to pay the costs.

Pleas in law and main arguments

The national legislation at issue

Ireland's Finance Act, 1992 (as amended) provides for the imposition of a tax on the registration of motor vehicles imported into the State. Pursuant to that Act, importers of vehicles are required to discharge, upon registration, the entire tax applicable for permanent registration. This requirement applies to all imported cars regardless of the intended and actual duration of their use in the State and includes cars that are hired or leased from abroad for pre-determined limited periods of time. While the Irish authorities have introduced the possibility to obtain a subsequent refund of excess tax paid, such a refund may only be granted following inspection and exportation of the vehicle at issue. There is no provision for interest to be paid on excess tax which had been retained and a EUR 500 fee is charged for the administration of the refund procedure.

Principal arguments

The Commission considers that Ireland's system for taxing the registration of motor vehicles imposes a disproportionate cash-flow and financial burden on Irish residents seeking to import hired or leased cars for pre-determined limited periods of time. In the Commission's view, the national rules at issue make it considerably more difficult and costly to hire and lease cars from other Member States than it is to hire or lease cars from undertakings established in Ireland. The Commission submits that Ireland's vehicle registration tax is liable to impede the provision and receipt of leasing and hiring services, is disproportionate, and therefore in breach of Article 56 TFEU.

GENERAL COURT

Judgment of the General Court of 23 October 2015 — Oil Turbo Compressor v Council

(Case T-552/13) ([1])

(Action for annulment — Common Foreign and Security Policy — Restrictive measures taken against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Time-limit for bringing proceedings — Out of time — Inadmissibility — Claim for damages — Inadmissibility)

(2015/C 414/31)

Language of the case: German

Parties

Applicant: Oil Turbo Compressor Co. (Private Joint Stock) (Tehran, Iran) (represented by: K. Kleinschmidt, lawyer)

Defendant: Council of the European Union (represented by: M. Bishop and J.-P. Hix, acting as Agents)

Re:

Partial annulment of Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ 2011 L 319, p. 11) and of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1), in so far as the applicant's name was included in the list of persons and entities to which those restrictive measures apply.

Operative part of the judgment

The Court:

1. *Dismisses the action as being inadmissible;*

2. *Orders Oil Turbo Compressor Co. (Private Joint Stock) to bear its own costs and to pay those incurred by the Council of the European Union.*

([1]) OJ C 359, 7.12.2013.

Judgment of the General Court of 23 October 2015 — Calida v OHIM — Quanzhou Green Garments (dadida)

(Case T-597/13) ([1])

(Community trade mark — International registration designating the European Community — Figurative mark dadida — Earlier Community word mark CALIDA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009)

(2015/C 414/32)

Language of the case: English

Parties

Applicant: Calida Holding AG (Sursee, Switzerland) (represented by: R. Kaase and H. Dirksmeier, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Quanzhou Green Garments Co. Ltd (Quanzhou, China)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 16 September 2013 (Case R 1190/2012-4), relating to cancellation proceedings between Calida Holding AG and Quanzhou Green Garments Co. Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Calida Holding AG to pay the costs.*

(1) OJ C 24, 25.1.2014.

Judgment of the General Court of 23 October 2015 — Trekstor v OHIM — MSI Technology (MovieStation)

(Case T-636/13) (1)

(Community trade mark — Invalidity proceedings — Community word mark MovieStation — Absolute grounds for refusal — Lack of distinctive character — Descriptive character — Article 7(1(b) and (c) of Regulation (EC) No 207/2009 — Article 52 of Regulation No 207/2009)

(2015/C 414/33)

Language of the case: German

Parties

Applicant: TrekStor Ltd (Hong Kong, China) (represented by: O. Spieker and M. Alber, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: MSI Technology GmbH (Frankfurt-am-Main, Germany) (represented by: T. Lieb, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 24 September 2013 (Case R 1914/2012-4), relating to invalidity proceedings between TrekStor Ltd and MSI Technology GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders TrekStor Ltd to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM);*

3. *Orders MSI Technology GmbH to bear its own costs.*

([1]) OJ C 39, 8.2.2014.

Judgment of the General Court of 23 October 2015 — Trekstor v OHIM (SmartTV Station)

(Case T-649/13) ([1])

(Community trade mark — Application for Community word mark SmartTV Station — Absolute grounds for refusal — Lack of distinctive character — Descriptive character — Article 7(1(b) and (c) of Regulation (EC) No 207/2009 — Article 7(3) of Regulation No 207/2009)

(2015/C 414/34)

Language of the case: German

Parties

Applicant: TrekStor Ltd (Hong Kong, China) (represented by: O. Spieker and M. Alber, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 1 October 2013 (Case R 128/2013-4), concerning an application for registration of the word sign SmartTV Station as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders TrekStor Ltd to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 39, 8.2.2014.

Judgment of the General Court of 23 October 2015 — Vimeo v OHIM — PT Comunicações (VIMEO)

(Case T-96/14) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark VIMEO — Earlier Community figurative mark meo — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 — No coexistence of the marks — Likelihood of confusion)

(2015/C 414/35)

Language of the case: English

Parties

Applicant: Vimeo LLC (New York, New York, United States) (represented by: A. Poulter and M. MacDonald, Solicitors)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Bullock and N. Bambara, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM: PT Comunicações, SA (Lisbon, Portugal)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 27 November 2013 (Case R 1092/2013-2), relating to opposition proceedings between PT Comunicações, SA and Vimeo LLC.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Vimeo LLC to pay the costs.*

([1]) OJ C 135, 5.5.2014.

Judgment of the General Court of 22 October 2015 — Council v Simpson

(Case T-130/14) ([1])

(Appeals — Civil service — Officials — Advancement in grade — Classification in grade — Decision not to award the person concerned grade AD 9 after he had passed a grade AD 9 open competition — Distortion of the evidence)

(2015/C 414/36)

Language of the case: English

Parties

Appellant: Council of the European Union (represented initially by M. Bauer and A. Bisch, and subsequently by M. Bauer and E. Rebasti, acting as Agents)

Other party to the proceedings: Erik Simpson (Brussels, Belgium) (represented by: M. Velardo, lawyer)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (First Chamber) of 12 December 2013 in *Simpson* v *Council* (F-142/11, ECR-SC, EU:F:2013:201), and seeking to have that judgment set aside in part.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the European Union Civil Service Tribunal (First Chamber) of 12 December 2013 in Simpson v Council (F-142/11, ECR, EU:F:2013:201), in so far as the Civil Service Tribunal annulled the decision by which the Council of the European Union refused the request of Mr Erik Simpson which sought an upgrade to grade AD 9 on the ground that he had passed Competition EPSO/AD/113/07 and in so far as it ordered the Council to pay all the costs (paragraphs 1 and 3 of the operative part of that judgment);*

2. *Refers the case back to the Civil Service Tribunal;*

3. *Reserves the costs.*

(1) OJ C 135, 5.5.2014.

Judgment of the General Court of 23 October 2015 — I Castellani v OHIM — Chomarat (Representation of a circle)

(Case T-137/14) (1)

(Community trade mark — Revocation procedure — Figurative mark representing a circle — Genuine use of a mark — Extent of use — Article 15(1)(a) and Article 51(1)(a) of Regulation (EC) No 207/2009 — Shape which differs by elements which do not alter the distinctive character of the mark — Rights of the defence — Article 75 of Regulation No 207/2009)

(2015/C 414/37)

Language of the case: English

Parties

Applicant: I Castellani Srl (Meldola, Italy) (represented by: M. Caramelli, F. Boscariol de Roberto, I. Gatto and D. Martucci, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: M. Rajh and A. Folliard-Monguiral, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM: Compagnie Chomarat (Paris, France)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 13 December 2013 (Case R 1001/2012-2), relating to revocation proceedings between Compagnie Chomarat and I Castellani Srl.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders I Castellani Srl to pay the costs.*

(1) OJ C 135, 5.5.2014.

Judgment of the General Court of 23 October 2015 — Hansen v OHIM (WIN365)

(Case T-264/14) (1)

(Community trade mark — Application for Community word mark WIN365 — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2015/C 414/38)

Language of the case: German

Parties

Applicant: Robert Hansen (Munich, Germany) (represented by: M. Pütz-Poulalion, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 20 February 2014 (Case R 908/2013-4), concerning an application for registration of the word sign WIN365 as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Robert Hansen to pay the costs.*

(1) OJ C 194, 24.6.2014.

Judgment of the General Court of 22 October 2015 — Volkswagen v OHIM (CHOICE)

(Case T-431/14) (1)

(Community trade mark — Application for Community word mark CHOICE — Mark consisting of an advertising slogan — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2015/C 414/39)

Language of the case: German

Parties

Applicant: Volkswagen AG (Wolfsburg, Germany) (represented by: U. Sander, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 3 April 2014 (Case R 2019/2013-1), concerning an application for registration of the word sign CHOICE as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Volkswagen AG to pay the costs.*

(1) OJ C 282, 25.8.2014.

Judgment of the General Court of 23 October 2015 — David Bonney v OHIM — Bruno (ATHEIST)

(Case T-714/14) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark ATHEIST — Earlier national word mark athé — Relative ground for refusal — Article 8(1)(b) and (2) of Regulation (EC) No 207/2009)

(2015/C 414/40)

Language of the case: English

Parties

Applicant: David Bonney (London, United Kingdom) (represented by: D. Farnsworth, Solicitor)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially by L. Rampini, and subsequently by D. Walicka, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM: Vanessa Bruno (Paris, France)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 5 August 2015 (Case R 803/2013-4), relating to opposition proceedings between Ms Vanessa Bruno and Mr David Bonney.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr David Bonney to bear his own costs and to pay those incurred by Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 431, 1.12.2014.

Judgment of the General Court of 23 October 2015 — Geilenkothen Fabrik für Schutzkleidung v OHIM (Cottonfeel)

(Case T-822/14) ([1])

(Community trade mark — Application for Community word mark Cottonfeel — Absolute grounds for refusal — Lack of distinctive character — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2015/C 414/41)

Language of the case: German

Parties

Applicant: Geilenkothen Fabrik für Schutzkleidung GmbH (Gerolstein-Müllenborn, Germany) (represented by: M. Straub, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 2 October 2014 (Case R 2579/2013-1), concerning an application for registration of the word sign Cottonfeel as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Geilenkothen Fabrik für Schutzkleidung GmbH to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 46, 9.2.2015.

Appeal brought on 28 September 2015 by LM against the order of the Civil Service Tribunal of 14 July 2015 in Case F-109/14, LM v Commission

(Case T-560/15 P)

(2015/C 414/42)

Language of the case: Italian

Parties

Appellant: LM (Ispra, Italy) (represented by: L. Ribolzi, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The applicant claims that the Court should:

— annul the contested order.

Pleas in law and main arguments

The present appeal is brought against the order of the Civil Service Tribunal of 14 July 2015 (Case F-109/14), which dismissed as manifestly unfounded an action seeking an order that the Commission pay the appellant, in respect of the survivor's pension which she receives, 35 % of the retirement pension received by her former spouse at the time of his death.

In support of her claims, the appellant submits that the Civil Service Tribunal did not examine her request to increase the pension in accordance with Article 25 the Universal Declaration of Human Rights and the Treaty of Lisbon, which recognise and respect the right of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Action brought on 30 September 2015 — Azur Space Solar Power v OHIM (Representation of a solar cell)

(Case T-578/15)

(2015/C 414/43)

Language of the case: English

Parties

Applicant: Azur Space Solar Power GmbH (Heilbronn, Germany) (represented by: J. Nicodemus, lawyer)

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

Details of the proceedings before OHIM

Trade mark at issue: International registration designating the European Union in respect of a figurative mark (Representation of a solar cell) — International registration No 1 201 973

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 27 July 2015 in Case R 2780/2014-4

Forms of order sought

The applicant claims that the Court should:

— annul the refusal of OHIM;

— order OHIM to pay the costs.

Plea in law

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

Action brought on 5 October 2015 — Monster Energy v OHIM (Representation of a peace symbol)

(Case T-583/15)

(2015/C 414/44)

Language of the case: English

Parties

Applicant: Monster Energy Company (Corona, United States) (represented by: P. Brownlow, Solicitor)

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

Details of the proceedings before OHIM

Trade mark at issue: Community figurative mark (Representation of a peace symbol) — Application for registration No 11 363 611

Contested decision: Decision of the Second Board of Appeal of OHIM of 17 July 2015 in Case R 2788/2014-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— remit the Applicant's case back to the Second Board of Appeal for a decision on the substance of the Restitutio Application in relation to the decision of the First Board of Appeal of 11 December 2013 in Case R 1285/2013-1;

— order OHIM to pay their own costs and those of the Applicant.

Pleas in law

— Infringement of Articles 58, 65(5), 75, 81(1) and 81(4) of Regulation No 207/2009;

— Infringement of Rule 65 of Regulation No 2868/95.

Action brought on 12 October 2015 — Onix Asigurări SA v EIOPA

(Case T-590/15)

(2015/C 414/45)

Language of the case: Romanian

Parties

Applicant: Onix Asigurări SA (Bucharest, Romania) (represented by: M. Vladu, lawyer)

Defendant: European Insurance and Occupational Pensions Authority (EIOPA)

Form of order sought

The applicant claims that the Court should:

— declare that the defendant has failed to act for the purposes of taking a decision regarding the misapplication by the Istituto per la Vigilanza sulle Assicurazioni (Italian supervisory authority for the insurance sector) of the provisions of Article 40(6) of Council Directive 92/49/EEC;

— in the alternative, annul decision BOA 2015 001of the Board of Appeal of 3 August 2015 and decision EIOPA-14-267 of the President of 6 June 2014, confirmed in the position statement EIOPA-14-653 of 24 November 2014;

— declare the defendant liable for the damage caused to the applicant by the defendant's failure to take a decision, in accordance with the first indent and by taking the decisions referred to in the second indent.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 17 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council

— There is no decision lawfully adopted by the defendant concerning the validity and appropriateness of opening an investigation;

— Decision EIOPA-14-267 of the President of 6 June 2014 was adopted without the conditions laid down in Article 39 (1)(2) and (3) of the regulation being fulfilled;

— The reasons for decision EIOPA-14-267 of the President of 6 June 2014 are not connected to the appropriateness of starting an investigation, being in reality concerned with the procedural means available to the applicant against the decision of the Italian national authority.

2. Second plea in law, alleging infringement of a substantial procedural requirement in relation to decision BOA 2015 001 of the Board of Appeal of 3 August 2015 and decision EIOPA-14-267 of the President of 6 June 2014

— The decision of the Board of Appeal was taken without analysing the legality and the validity of decision EIOPA-14-267 of the President of 6 June 2014 and the Board of Appeal gave a decision without analysing all of the matters submitted to it;

— The decision EIOPA-14-267 of the President of 6 June 2014 was issued without the conditions laid down in Article 39(1)(2) and (3) of the regulation being fulfilled and without giving reasons, at least as far as concerns the essential aspects of that analysis.

3. Third plea in law, alleging the existence of material damage and damage to image suffered by the applicant (decline in turnover and profit, damage to reputation) caused directly and intentionally by the defendant by its failure to take a decision and by adopting the abovementioned decisions which are null and void.

Action brought on 12 October 2015 — Novartis v OHIM — SK Chemicals (Representation of a patch)

(Case T-592/15)

(2015/C 414/46)

Language in which the application was lodged: English

Parties

Applicant: Novartis AG (Basel, Switzerland) (represented by: M. Douglas, lawyer)

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

Other party to the proceedings before the Board of Appeal: SK Chemicals GmbH (Eschborn, Germany)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Community figurative mark (Representation of a patch) — Application for registration No 11 293 362

Procedure before OHIM: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 7 August 2015 in Case R 2342/2014-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision.

Pleas in law

— Infringement of Article 7(1)(e)(ii) of Regulation No 207/2009;

— Infringement of the principle of fair trial by the Board of Appeal of OHIM.

Action brought on 14 October 2015 — The Art Company B & S v OHIM — G-Star Raw (THE ART OF RAW)

(Case T-593/15)

(2015/C 414/47)

Language in which the application was lodged: English

Parties

Applicant: The Art Company B & S, SA (Quel, Spain) (represented by: J. Villamor Muguerza and L. Sánchez Calderón, lawyers)

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

Other party to the proceedings before the Board of Appeal: G-Star Raw CV (Amsterdam, Netherlands)

Details of the proceedings before OHIM

Applicant: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Community word mark 'THE ART OF RAW' — Application for registration No 11 093 036

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 9 July 2015 in Case R 1980//2014-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM as well as the CTMA Applicant (in case it intervenes) to pay the costs of the present Appeal.

Plea in law

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

Action brought on 19 October 2015 — Batmore Capital v. OHIM — Univers Poche (POCKETBOOK)

(Case T-596/15)

(2015/C 414/48)

Language in which the application was lodged: English

Parties

Applicant: Batmore Capital Ltd (Tortola, British Virgin Islands) (represented by: D. Masson, lawyer)

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

Other party to the proceedings before the Board of Appeal: Univers Poche (Paris, France)

Details of the proceedings before OHIM

Applicant of the trade mark at issue: Applicant

Trade mark at issue: International registration designating the European Union in respect of the figurative mark containing the word element 'POCKETBOOK' — Application for registration No 1 034 872

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 30 July 2015 in Case R 1952/2014-1

Form of order sought

The applicant claims that the Court should:

— consider the present appeal admissible;

— annul the contested decision in its entirety;

— register the Community part of the International trademark registration No 1 034 872;

— order OHIM to pay the fees and costs incurred by the applicant in the course of the present proceedings.

Pleas in law

— Wrong appreciation of the similarity of the products and services;

— Wrong appreciation of the likelihood of confusion between the signs in conflict.

Action brought on 27 October 2015 — Ertico — Its Europe/Commission

(Case T-604/15)

(2015/C 414/49)

Language of the case: English

Parties

Applicant: European Road Transport Telematics Implementation Coordination Organisation — Intelligent Transport Systems & Services Europe (Ertico — Its Europe) (Brussels, Belgium) (represented by: M. Wellinger and K. T'Syen, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the validation panel of the European Commission, of 18 August 2015, finding that the applicant does not qualify as a micro, small and medium-sized enterprise within the meaning of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ 2003 L 124, p. 36); and

— order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision violates Article 22(1), indent 3 of Regulation No 58/2003 ([1]) because the validation panel adopted the contested decision more than 2 months after the date on which proceedings were instituted with the validation panel.

2. Second plea in law, alleging the contested decision breaches (i) Article 22(1) of Regulation No 58/2003; (ii) the applicant's rights of defence; and (iii) the principle of sound administration because the validation panel failed to hear the arguments of the applicant before taking the contested decision.

3. Third plea in law, alleging that the contested decision breaches the principles of (i) legal certainty, (ii) sound administration, (iii) the protection of the applicant's legitimate expectations; and (iv) 'res judicata' because the validation panel, while admitting that the arguments raised by the applicant on 7 February 2014 are correct, nevertheless substituted an entirely new statement of reasons for its initial statement of reasons, without there being any new and material facts.

4. Fourth plea in law, alleging that the contested decision violates the Commission Recommendation 2003/361/EC (the 'SME Recommendation') in that its conclusion that the applicant does not qualify as an enterprise is based on criteria which are not foreseen in the SME Recommendation but, instead, in section 1.1.3.1(6)(c) of Commission decision 2012/838/EU ([2]).

5. Fifth plea in law, alleging that the contested decision conclusion that the applicant would not qualify as an SME sets aside and ignores the clear and unequivocal wording of the SME Recommendation and is based on an arbitrary and purely subjective interpretation of the SME Recommendation.

6. Sixth plea in law, alleging that the contested decision erroneously concludes that the applicant would not qualify as an SME within the meaning of the SME Recommendation: the applicant is an 'enterprise' and the applicant is 'autonomous' within the meaning of the Annex to the SME Recommendation.

7. Seventh plea in law, alleging that the contested decision breaches the most favourable treatment principle under Commission Decision 2012/838/EU, as well as the equivalent provision under the Horizon 2020 programme.

8. Eighth plea in law, alleging that the contested decision is vitiated by a contradictory and inadequate statement of reasons, the validation panel having failed to comply with its duty to duly motivate its decision.

([1]) Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes
(OJ 2003 L 11, p. 1)

([2]) Commission Decision of 18 December 2012 on the adoption of the Rules to ensure consistent verification of the existence and legal status of participants, as well as their operational and financial capacities, in indirect actions supported through the form of a grant under the Seventh Framework Programme of the European Community for research, technological development and demonstration activities and under the Seventh Framework Programme of the European Atomic Energy Community for nuclear research and training activities (OJ 2012 L 359, p. 45).

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 6 July 2015 — ZZ and Others v EIB

(Case F-99/15)

(2015/C 414/50)

Language of the case: French

Parties

Applicants: ZZ and Others (represented by: L. Levi, lawyer)

Defendant: European Investment Bank (EIB)

Subject-matter and description of the proceedings

Application for annulment of the salary statements of April 2015 and the bonus statements of April 2015 which, in the view of the applicants, implement decisions which fail to have regard to their rights to a salary progression and claim for damages in respect of the pecuniary and non-pecuniary harm allegedly suffered.

Form of order sought

— Annulment of the decisions to apply to the applicants the decision of the Board of Directors of the defendant of 16 December 2014 setting a salary progression limited to 2,7 % and the decision of the Management Committee of the defendant of 4 February 2015, entailing a salary loss, those decisions being in the salary statements of April 2015 and the annulment, to the same extent, of all the decisions in the subsequent salary statements;

— Annulment of the notices concerning the performance rewards for 2015;

— Accordingly, order the defendant

  — to pay the difference in remuneration resulting from the decisions cited above of the Board of Directors of the defendant of 16 December 2014 and of the Management Committee of the defendant of 4 February 2015 as compared to the application of the minimum merit grid; to that difference in remuneration must be added late-payment interest with effect from 12 April 2015 and, subsequently, on the 12th day of each month until payment in full, that interest being set at the rate of the ECB increased by three points;

  — to pay the difference in remuneration resulting from the application of the rate of 16,3 % on a salary budget defined in accordance with the defendant's undertakings;

  — to pay damages in respect of the harm suffered as a result of the loss of purchasing power, that loss being evaluated *ex aequo et bono* and provisionally at 1,5 % of the monthly remuneration;

— to pay to each applicant EUR 1 000 as compensation for the non-pecuniary harm;

— Order the defendant to pay all the costs.

Action brought on 6 July 2015 — 6 July 2015 v EIB

(Case F-100/15)

(2015/C 414/51)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: L. Isola and G. Isola, lawyers)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

Annulment, firstly, of the applicant's staff report for 2013 and, secondly, the consecutive and connected decisions of the EIB such as the decision not to promote him to grade D and compensation for the non-pecuniary and pecuniary damage allegedly suffered.

Form of order sought

— Annul the decision dated 8 December 2014 of the Appeals Committee and return the file to that committee after laying down the criteria with which it must comply in adopting the new decision;

— Annul the guidelines defined by the Human Resources Directorate in the note 'Guidelines to the 2013 annual staff appraisal exercise', in so far as they provide that the final evaluation must be expressed by means of a *written summary*, without ever having defined the corresponding statements;

In the alternative:

— Annul the entire 2013 staff report (in the *appraisal* section, in so far it does not give the applicant the mark 'exceptional performance' or 'very good performance' and does not propose his promotion to grade D, and finally in so far as it does not provide for the development of his career and fails to set his objectives for 2014);

— Annul all the connected, consecutive and prior acts, including the promotions made public by the note '*Performance Evaluation exercise 2013 — List of promotions and awards*' distributed on 31 March 2014;

— Find that the applicant has been the subject of harassment;

— Find that the European Union is liable for inciting harassment and infringement of the rules concerning a 'fair trial';

— Order the defendants jointly and severally to pay fair compensation for the physical, non-pecuniary and pecuniary harm set out in paragraphs 112 to 120 below;

— Order the defendants jointly and severally to pay compensatory and late-payment interest and compensation for the effect of inflation on the sums awarded;

— Order both defendants to pay the costs, without prejudice.

Action brought on 22 September 2015 — ZZ v Council

(Case F-124/15)

(2015/C 414/52)

Language of the case: French

Parties

Applicant: ZZ (represented by: T. Bontinck and A. Guillerme, lawyers)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the decision not to take further action on the application made by the applicant for early retirement, in so far as it was taken after the entry into force of the new Staff Regulations, thus withdrawing the previous favourable decision, and application for compensation for the material and non-material harm allegedly suffered.

Form of order sought

— Annul the contested decision of 12 November 2014 and, in consequence,

— Pay compensation for the loss suffered by the applicant, assessed, subject to possible increase or decrease during the proceedings, at EUR 85 353,96 (eighty-five thousand, three hundred and fifty-three euros and ninety-six cents), together with interest to run from the date on which the claim was made, 12 February 2015, calculated on the basis of the rate fixed by the European Central Bank for its main refinancing operations, applicable for the period in question, increased by two points;

— Order the Council to pay the costs.

Action brought on 25 September 2015 — ZZ and Others v Court of Justice

(Case F-126/15)

(2015/C 414/53)

Language of the case: French

Parties

Applicants: ZZ and Others (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: Court of Justice of the European Union

Subject-matter and description of the proceedings

Payment of compensation to the applicants for the material harm they have incurred on account of the loss of their pension rights acquired in the national system following the transfer of those rights to the pension scheme of the European Union.

Form of order sought

The applicants claim that the Tribunal should:

— order the Court of Justice to pay the sums referred to in the application to any fund or insurance policy in the applicants' names;

— in the alternative, order the Court of Justice to pay EU 61 121,08 to ZZ, EUR 129 440,98 to [another applicant], EUR 76 324,29 to [another applicant] and EUR 99 565,13 to [another applicant], those sums to be paid together with interest calculated at a rate of 3,1 % per annum from the date of the transfer of the applicants' pension rights to the PSEUI;

— in the further alternative, declare that the Court of Justice acted negligently when it transferred the applicants' pension rights;

— order the Court of Justice to pay the costs.

Action brought on 29 September 2015 — ZZ v Commission

(Case F-127/15)

(2015/C 414/54)

Language of the case: French

Parties

Applicant: ZZ (represented by: C.W. Godfrey, C. Antoine and M. Gomes Lopes, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

The annulment of the Commission's decision imposing the disciplinary measure of withholding EUR 185 from the applicant's pension for a 12-month period and taking effect on the date on which he is to retire, on account of the exercise of an outside activity without permission.

Form of order sought

The applicant claims that the Tribunal should:

— annul the European Commission decision dated 16 December 2014, with all ensuing legal consequences;

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

Action brought on 30 September 2015 — ZZ and ZZ v Commission

(Case F-128/15)

(2015/C 414/55)

Language of the case: French

Parties

Applicants: ZZ and ZZ (represented by: J.-N. Louis and N. de Montigny, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

The annulment of either the proposal for the calculation, or the final calculation, of the number of years of pensionable service granted in the European Union pension scheme and corresponding to the applicants' pension rights, acquired under national schemes, which they wish to transfer into the European Union pension scheme, pursuant to the new general implementing provisions for Article 11(2) of Annex VIII to the Staff Regulations.

Form of order sought

The applicants claim that the Tribunal should:

— annul the decisions of 30 April 2015, of 1 July 2015 and of 6 July 2015 fixing the amount credited to the Community pension scheme in respect of the applicants' pension rights acquired prior to their entry into service at the Commission;

— order the Commission to pay the costs.

Action brought on 30 September 2015 — ZZ v Commission

(Case F-129/15)

(2015/C 414/56)

Language of the case: French

Parties

Applicant: ZZ (represented by: H. Jeannin, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision not to take into account, for the purposes of calculating the applicant's retirement pension, the period of service equivalent to 26 days which was granted following the transfer of pension rights acquired in the national system to the EU pension scheme, and a claim for one symbolic euro by way of compensation for the non-material damage which the applicant claims to have suffered.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision rejecting his complaint and the implied decision, by the decision of 6 February 2015 on the granting and payment of his pension rights, not to take into account, for the purposes of calculating that pension, the period of 26 days acquired through the transfer of pension rights from the French retirement schemes known as CNAVTS-ARRCO and MSA;

— award one symbolic euro by way of compensation for the non-material damage suffered;

— order the Commission to pay EUR 3 500 by way of costs.

Action brought on 9 October 2015 — ZZ v Commission

(Case F-131/15)

(2015/C 414/57)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Orlandi and T. Martina, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision not to reclassify the applicant as grade AD 13 for the 2013 reclassification year.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of the authority empowered to conclude contracts of employment not to reclassify the applicant as grade AD 13 for the 2013 reclassification year;

— order the Commission to pay the costs.

Action brought on 12 October 2015 — ZZ v Commission

(Case F-133/15)

(2015/C 414/58)

Language of the case: French

Parties

Applicant: ZZ (represented by: M. Velardo, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision to impose on the applicant, following an investigation concerning a conflict of interest, a penalty of permanent downgrading by two grades, and compensation for the non-material damage which the applicant claims to have suffered.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of 10 December 2014 to impose on the applicant, as a disciplinary measure, a penalty of permanent downgrading, in the same function group, from grade AD 11 to grade AD 9;

— award the applicant a sum of EUR 100 000 by way of compensation in relation to the long duration of the procedure;

— order the Commission to pay the costs.

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