

— Order the proprietor of the disputed Community trade mark to pay all the future costs of these proceedings and to reimburse the applicant for the costs of appeal incurred by him to date.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Figurative mark including the word elements 'BLUE JEANS GAS' for goods in Classes 3, 9, 14 and 25 — Registered Community trade mark No 205050.

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

Applicant for the declaration of invalidity of the Community trade mark: The applicant.

Grounds for the application for a declaration of invalidity: The grounds put forward for the application for the declaration of invalidity are based, on the one hand, on the application of Article 53(1)(a) and (c), Article 8(1)(b), Article 53(2) and Article 8(1) of Regulation No 207/2009 and, on the other, on French registrations No 1594704 and No 1627459 of figurative [marks] '-GAS- BIJOUX' and 'BIJOUX -GAS-' for goods in Classes 14 and 25.

Decision of the Cancellation Division: Annulment in part of the Community trade mark.

Decision of the Board of Appeal: Annulment in part of the decision of the Cancellation Division, annulment in part of the Community trade mark and dismissal of the application for annulment.

Pleas in law:

Infringement of Article 56(3) of Regulation No 40/94 (now Article 57(3) [of Regulation No 207/2009]) and of Rule 22(3) and (4) of Regulation No 2868/95; infringement of Article 15(1) and (2) of Regulation No 40/94 and of Article L714(5)(b) of the French Intellectual Property Code; infringement of Article 73 of Regulation No 40/94 (now Article 75 [of Regulation No 207/2009]), in that the Board of Appeal committed a number of errors in law and of assessment as regards the evidence of genuine use of the earlier mark under Class 25.

Incorrect application of Article 52(1)(a) and Article 8(1)(b) of Regulation No 40/94 and infringement of Article 53 of Regulation No 40/94 and [the following] provisions of French law: Article 2262 of the Civil Code and Article L714(3) of the French Intellectual Property Code, in that the assessment by the Board of Appeal of the likelihood of confusion is incorrect.

Infringement of Article 74 of Regulation No 40/94, in that the Board of Appeal ruled *ultra petita* by ruling on the comparison of the goods in Class 14, which was not part of the subject-matter of the appeal brought before it.

Infringement of Article 62(1) of Regulation No 40/94, in that the Board of Appeal was not entitled to limit its examination to only the prior right existing under mark No 1594704, after having decided to exercise the powers of the Cancellation Division, nor to refer the case back to the Cancellation Division to rule on the other rights relied on, which had already been examined.

Appeal brought on 28 February 2012 by Willem Stols against the judgment of the Civil Service Tribunal of 13 December 2011 in Case F-51/08 RENV Stols v Council

(Case T-95/12 P)

(2012/C 126/43)

Language of the case: French

Parties

Appellant: Willem Stols (Halsteren, Netherlands) (represented by S. Rodrigues, A. Blot and C. Bernard-Glanz, lawyers)

Other party to the proceedings: Council of the European Union

Form of order sought by the appellant

- Declare the present appeal admissible;
- Set aside the judgment of 13 December 2011 of the First Chamber of the Civil Service Tribunal of the European Union in Case F-51/08 RENV;
- Grant the form of order submitted by him at first instance;
- Order the Council to pay the costs of both sets of proceedings.

Pleas in law and main arguments

In support of the appeal, the appellant relies on the following pleas in law.

1. First plea in law, alleging that the Civil Service Tribunal, when it examined the first plea in law submitted at first instance claiming that Article 45(1) of the Staff Regulations of Officials of the European Union had been infringed and claiming a manifest error of assessment, infringed European Union law by:
 - using a criterion which was not provided for under Article 45(1) of the Staff Regulations (see paragraphs 46 and 47 of the judgment under appeal);
 - providing inadequate reasoning for its judgment and calling into question the classification into two function groups provided for in Article 5 of the Staff Regulations (see paragraphs 52 to 54 of the judgment under appeal); and

— providing reasoning which contained substantive inaccuracies and by misreading the language criterion referred to in Article 45(1) of the Staff Regulations (see paragraphs 50 and 51 of the judgment under appeal)

2. Second plea in law, alleging that the Civil Service Tribunal, when examining the second plea in law claiming infringement of Article 59(1) of the Staff Regulations and failure to observe the non-discrimination principle, reached a conclusion lacking all legal foundation, in so far as it rejected the second plea as ineffective because the first plea had not been established, whereas it made several errors of law in concluding that the first plea in law was not established (paragraphs 59 and 60 of the judgment under appeal).

Action brought on 7 March 2012 — Spain v Commission

(Case T-109/12)

(2012/C 126/44)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: A. Rubio González)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul Commission Decision C(2011) 9992 of 22 December 2011 reducing the assistance from the Cohesion Fund granted to the following projects: 'Measures to be undertaken to implement the 2nd phase of the master plan for urban solid waste management in the Autonomous Community of Extremadura' (CCI No 2000.ES.16.C.PE.020); Outfall: 'Middle basin, Getafe and lower basin of the Arroyo del Culebro (Tagus basin-Wastewater drainage)' (CCI No 2002.ES.16.C.PE.002); 'Re-use of treated water for the irrigation of green spaces in Santa Cruz de Tenerife' (CCI No 2003.ES.16.C.PE.003) and 'Technical assistance for the study and drafting of the project to supply water to the Mancomunidad de Algodor and to increase that supply' (CCI No 2002.ES.16.C.PE.040);

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 18(3) of Commission Regulation (EC) No 1386/2002 of 29 July

2002 laying down detailed rules for the implementation of Council Regulation (EC) No 1164/94 as regards the management and control systems for assistance granted from the Cohesion Fund and the procedure for making financial corrections,⁽¹⁾ since more than three months elapsed between the date of the hearing and the decision.

2. Second plea in law, alleging infringement of Article H of Annex II of Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund,⁽²⁾ since the procedure laid down in that article was applied without the necessary verifications having been completed.

3. Third plea in law, alleging infringement of Article H of Annex II of Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund, on the ground that there was a lack of verification to refute the end-of-project declarations.

4. Fourth plea in law, alleging infringement of Article H of Annex II of Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund, since it has not been established that there were irregularities.

5. Fifth plea in law, alleging failure to observe the principle of the protection of legitimate expectations, in relation to Project CCI No 2000.ES. 16.C PE.020, since the Commission applied to that project criteria from a document (the guidelines for determining financial corrections for public procurement, presented to the Member States at the Coordination Committee of the Funds of 28 November 2007) which was not made public until some 29 months after the Spanish authorities had submitted the documents for the final balance.

⁽¹⁾ OJ 2002 L 201, p. 5.

⁽²⁾ OJ 1994 L 130 p. 1, amended by Council Regulation (EC) No 1264/1999 of 21 June 1999 (OJ 1999 L 161, p. 57).

Action brought on 27 February 2012 — Iranian Offshore Engineering & Construction v Council

(Case T-110/12)

(2012/C 126/45)

Language of the case: Spanish

Parties

Applicant: Iranian Offshore Engineering & Construction Co. (Tehran, Iran) (represented by: J. Viñals Camallonga, L. Barriola Urruticococha and J. Iriarte Ángel, lawyers)

Defendant: Council of the European Union