

Operative part of the order

1. *There is no need to adjudicate on the action.*
2. *The parties shall bear their own costs.*

(¹) OJ C 312, 19.12.2009.

Appeal brought on 10 December 2010 by Patrizia De Luca against the judgment of the Civil Service Tribunal delivered on 30 September 2010 in Case F-20/06, De Luca v Commission

(Case T-563/10 P)

(2011/C 63/52)

Language of the case: French

Parties

Appellant: Patrizia De Luca (Brussels, Belgium) (represented by: S. Orlandi and J.-N. Louis, lawyers)

Other parties to the proceedings: European Commission and Council of the European Union

Forms of order sought by the appellant

The appellant claims that the Court should:

- set aside the judgment of the Civil Service Tribunal delivered on 30 September 2010 (Case F-20/06 De Luca v Commission) dismissing the appellant's application;
- giving judgment itself,
 - annul the decision of 23 February 2005 of the Commission of the European Communities appointing the applicant to a post as an administrator, in so far as it sets her classification at grade A*9 step 2;
 - order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

In support of the appeal, the appellant puts forward two pleas in law.

1. First plea in law alleging an error of law in that it was ruled that Article 12(3) of Annex XIII to the Staff Regulations of officials of the European Union applied whereas that provision applies only to 'recruitment' of officials and the applicant was already an official at the time of her appointment.
 - The appellant claims that by ruling that that provision was applicable, the CST misunderstood the material scope of Article 12(3) of Annex XIII to the Regulations, infringing the rule of interpretation according to which transitional legislative provisions must be interpreted strictly.

2. Second plea in law alleging an error of law in that the objection of illegality of Article 12(3) of Annex XIII to the Staff Regulations was rejected.
 - the appellant claims that the application of that provision results in an infringement of the fundamental principle of equal treatment of officials and the principle of entitlement to reasonable career prospects, inasmuch as the appellant was downgraded after passing a higher level competition whereas successful candidates in the internal competition of grade B*10 were treated more favourably in that their classification was set at grade A*10.
 - The appellant further claims that the CST erred in law in finding that an objection of illegality in respect of Articles 5(2) and 12(3) of Annex XIII to the Staff Regulations had not been raised implicitly on the basis of the plea in law alleging infringement of the principles of equal treatment, proportionality and the obligation to state reasons.

Action brought on 17 December 2010 — Environmental Manufacturing v OHIM — Wolf (Representation of the head of a wolf)

(Case T-570/10)

(2011/C 63/53)

Language in which the application was lodged: English

Parties

Applicant: Environmental Manufacturing LLP (Stowmarket, United Kingdom) (represented by: S. Malynicz, barrister, and M. Atkins, solicitor)

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

Other party to the proceedings before the Board of Appeal: Société Elmar Wolf, SAS (Wissembourg, France)

Form of order sought

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 October 2010 in case R 425/2010-2; and
- Order the defendant and the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark representing the head of a wolf, for goods in class 7 — Community trade mark application No 4971511

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

Mark or sign cited in opposition: French trade mark registration No 99786007 of the figurative mark 'WOLF Jardin' for goods in classes 1, 5, 7, 8, 12 and 31; French trade mark registration No 1480873 of the figurative mark 'Outils WOLF' for goods in classes 7 and 8; International trade mark registration No 154431 of the figurative mark 'Outils WOLF' for goods in classes 7 and 8; International trade mark registration No 352868 of the figurative mark 'Outils WOLF' for goods in classes 7, 8, 12 and 21

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Annulled the decision of the Opposition Division

Pleas in law: The applicant contends that the contested decision infringes Articles 42(2) and 42(3) of Council Regulation (EC) No 207/2009, as the Board of Appeal failed to identify within the class of products for which the earlier marks were registered a coherent sub-category capable of being viewed independently of the wider class, and therefore failed to conclude that there had only been proof that the mark has been put to genuine use in relation to part of the goods for which the marks were protected.

In addition, the applicant contends that the contested decision infringes Article 8(5) of Council Regulation (EC) No 207/2009, as the Board of Appeal misidentified the relevant consumer, wrongly concluded that there would be a relevant link and failed to apply the criterion of an effect on the economic behaviour of the relevant consumer and the criterion that in order to be considered unfair, the mark must transfer some image or confer some marketing boost to the junior users' goods, which was not the case. Further the Board of Appeal failed to realise that the proprietor of the earlier mark had not even correctly alleged the relevant harm under Article 8(5), still less proved that it was likely, and had therefore failed to discharge the burden upon it.

Action brought on 16 December 2010 — Fabryka Łożysk Tocznych-Kraśnik v OHIM — Impexmetal (FŁT-1)

(Case T-571/10)

(2011/C 63/54)

Language in which the application was lodged: Polish

Parties

Applicant: Fabryka Łożysk Tocznych-Kraśnik S.A. (Kraśnik, Poland) (represented by: J. Sieklucki, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Impexmetal S.A. (Warsaw, Poland)

Form of order sought

- annul in its entirety the decision of the First Board of Appeal of OHIM of 6 October 2010 in Case R 1387/2009-1;
- order OHIM and IMPEXMETAL S.A. to pay the costs of the proceedings, including the costs incurred by the applicant in its action before the Board of Appeal and the Opposition Division of OHIM.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: figurative trade mark 'FŁT-1' for goods in Class 7 — application no 5026372

Proprietor of the mark or sign cited in the opposition proceedings: IMPEXMETAL S.A.

Mark or sign cited in opposition: Community figurative trade marks 'FŁT' and national verbal and figurative trade marks 'FŁT' for goods in Class 7

Decision of the Opposition Division: opposition upheld in part and trade-mark application rejected in respect of several goods in Class 7

Decision of the Board of Appeal: appeal brought against the decision of the Opposition Division dismissed

Pleas in law: breach of Article 8(1)(b) of Regulation (EC) No 207/2009 ⁽¹⁾ by reason of a misappraisal of the similarity of the opposing marks; failure to have regard for the fact that the trade mark applied for constitutes part of the name of the applicant company, which has been used long before the date of the application, and is a historically well-founded designation distinguishing the applicant; and failure to take account of the long-lasting and peaceful co-existence of the trade mark applied for and the trade marks cited in opposition.

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