

2. Second plea in law: in the contested decision, the Commission misapplied Article 107(1) TFEU and infringed substantive procedural requirements, for it assessed the facts incorrectly and gave defective and/or incorrect reasons for the decision at issue with regard to the conclusion that the measure recapitalising Elan in 2008 had not been effected in accordance with the principle of the private investor operating in a market economy, thus affording Elan a selective advantage.

The applicant claims in its action that the measure recapitalising Elan in 2008 was effected in accordance with the principle of the prudent private investor operating in a market economy, for the members, when deciding on the recapitalisation measure, relied on the appraisal of the undertaking in which proper consideration was given to the worsening of Elan's operations in the greater part of the winter season of 2007/2008, and therefore during the first quarter of 2008 too. The worsening state of affairs in 2008 was not, however, so drastic as to affect the reliability of an assessment of the value of the undertaking. The members took their decision as long-term shareholders in an undertaking that had temporarily run into difficulties, but that was in the long term capable not merely of surviving, but also of returning to profitable operation. In its contested decision, the Commission did not satisfactorily explain why it took selective account of an estimate of the value of the undertaking, thus acting arbitrarily.

Action brought on 27 November 2012 — Ted-Invest v OHIM — Scandia Down (sensi scandia)

(Case T-516/12)

(2013/C 32/31)

Language in which the application was lodged: English

Parties

Applicant: Ted — Invest EOOD (Plovdiv, Bulgaria) (represented by: A. Ivanova, lawyer)

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

Other party to the proceedings before the Board of Appeal: Scandia Down LLC (Weehawken, United States)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 September 2012 in case R 2247/2011-1, for declaring the trademark as invalid for the goods in classes 20 and 24;

— Alternatively if the Court does not uphold the whole appeal, to uphold the appeal and to annul the decision of the First Board of Appeal in connection with the goods in class 20.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark 'sensi scandia', for goods in classes 16, 20 and 24 — Community trade mark registration No 8596975

Proprietor of the Community trade mark: The applicant

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

Grounds for the application for a declaration of invalidity: The request for a declaration of invalidity was based on the grounds laid down in Article 53(1) in conjunction with Article 8(1)(b) of Council Regulation No 207/2009, and was based on the Community trade mark registration No 8173312 of the word mark 'SCANDIA HOME', for goods and services in classes 20, 24, 25 and 35

Decision of the Cancellation Division: Declared the contested CTM invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 53(1) in conjunction with Articles 8(2) and 8(1) of Council Regulation No 207/2009.

Action brought on 23 November 2012 — Alro v Commission

(Case T-517/12)

(2013/C 32/32)

Language of the case: English

Parties

Applicant: Alro SA (Slatina, Romania) (represented by: C. Quigley, QC, O. Bretz, Solicitor, and S. Verschuur, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the Commission's decision of 26 April 2012 to open, pursuant to Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') and Article 4(4) of Council's Regulation (EC) No 659/1999⁽¹⁾ ('the Procedural Regulation'), a formal investigation into alleged unlawful State aid granted by Romania, through its control of Hidroelectrica S.A. ('Hidroelectrica'), to ALRO in the form of preferential tariffs for the purchase of electricity through a contract concluded in 2005 and its successive amendments;