

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* industrysurf, SL (Trapagaran, Spain)

### **Details of the proceedings before EUIPO**

*Proprietor of the trade mark at issue:* Other party to the proceedings before the Board of Appeal

*Trade mark at issue:* EU figurative mark in black and white containing the word elements 'AIRHOLE FACE MASKS YOU IDIOT' — EU trade mark No 9 215 427

*Procedure before EUIPO:* Proceedings for a declaration of invalidity

*Contested decision:* Decision of the Fourth Board of Appeal of EUIPO of 18/01/2016 in Case R 2547/2014-4

### **Form of order sought**

The applicant claims that the Court should:

- reverse the contested decision, and declare the EUTM invalid in its entirety, or alternatively annul the contested decision;
- order industrysurf, SL to pay the applicant's costs of this appeal and of the proceedings before the Board of Appeal and to pay the costs ordered to be paid by the Cancellation Division.

### **Pleas in law**

- Infringement of Article 8(3) of Regulation No 207/2009;
- Infringement of Article 52(1)(b) of Regulation No 207/2009;
- Infringement of Article 53(1)(b) of Regulation No 207/2009.

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## **Action brought on 17 March 2016 — Naviera Armas v Commission**

**(Case T-108/16)**

(2016/C 175/23)

*Language of the case:* Spanish

### **Parties**

*Applicant:* Naviera Armas, SA (Las Palmas de Gran Canaria, Spain) (represented by: J. Buendía Sierra and Á. Givaja Sanz, lawyers)

*Defendant:* European Commission

### **Form of order sought**

The applicant claims that the General Court should:

- annul the decision of the European Commission of 8 December 2015 on State aid SA.36628 (2015/NN-2) (OJ 2016 C 25, p. 2) finding that no State aid was granted to the shipping company Fred Olsen S.A. in the context of measures adopted by the Kingdom of Spain at Puerto de las Nieves;
- order the defendant to pay its own costs and those of the applicant.

**Pleas in law and main arguments**

By the contested decision, the Commission found that the alleged exclusive right held by Fred Olsen to operate out of the port of Puerto de las Nieves (the Canary Islands, Spain), Fred Olsen's total or partial exemption from payment of the corresponding port dues, and the conditions of use of that port which, according to the applicant, also provide an unfair advantage to that shipping company in that they exclude conventional vessels, do not constitute State aid.

In support of its action, the applicant raises a single plea claiming that it provided a sufficient statement of reasons for the Commission to have reasonable doubt concerning the existence of State aid in favour of Fred Olsen, thus giving grounds for initiation of a formal investigation procedure.

In support of that plea, the applicant contends that:

- the excessively long duration of the preliminary examination carried out by the Commission between the date Naviera Armas lodged its complaint, 26 April 2013, and the date of the contested decision is, in itself, evidence of the complexity of the case and demonstrates that initiation of a formal investigation procedure was necessary.
- the contested decision is vitiated by certain manifest errors in the assessment of the facts, such as stating that no undertaking requested permission to operate out of Puerto de las Nieves using high speed ferries before 2013, that Fred Olsen was the only undertaking interested in using the port in the 1990s, and that only high speed ferries can operate out of that port.
- Fred Olsen has had exclusive use of Puerto de las Nieves since 1991 thus giving it a competitive advantage at the discretion of the Spanish authorities.
- Fred Olsen has benefitted from total exemption from certain port dues for over 20 years.

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**Action brought on 18 March 2016 — Savant Systems v EUIPO — Savant Group (SAVANT)****(Case T-110/16)**

(2016/C 175/24)

*Language in which the application was lodged: English***Parties**

*Applicant:* Savant Systems LLC (Osterville, Massachusetts, United States) (represented by: O. Nilgen, A. Kockläuner, lawyers)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Savant Group Ltd (Burton in Kendal, United Kingdom)

**Details of the proceedings before EUIPO**

*Proprietor of the trade mark at issue:* Other party to the proceedings before the Board of Appeal

*Trade mark at issue:* EU word mark 'SAVANT' — EU trade mark No 32 318

*Procedure before EUIPO:* Proceedings for a declaration of invalidity

*Contested decision:* Decision of the Fourth Board of Appeal of EUIPO of 18 January 2016 in Case R 33/2015-4