

Contested decision: Decision of the First Board of Appeal of EUIPO of 12 March 2021 in Case R 2013/2020-1

Form of order sought

The applicant claims that the General Court should:

- annul the contested decision, in so far as the appeal in Case R 2013/2020-1 was dismissed and registration of EU trade mark No 18 012 451 ALEGRA DE BERONIA (word mark) was refused in respect of all the goods at issue;
- order EUIPO to pay the costs.

Plea in law

- Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark.

Action brought on 31 May 2021 — Falke v Commission

(Case T-306/21)

(2021/C 278/94)

Language of the case: German

Parties

Applicant: Falke KGaA (Schmallenberg, Germany) (represented by: M. Vetter, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul, pursuant to the first paragraph of Article 264 TFEU, the decision of the defendant of 20 November 2020 (State aid No SA.59289), as amended by the decision of the defendant of 12 February 2021 (State aid No SA.61744);
- order the defendant to pay the applicant's costs.

Pleas in law and main arguments

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

1. The German aid scheme 'Bundesregelung Fixkostenhilfe 2020' approved by the defendant is incompatible with the internal market, as it distorts competition without that being exceptionally justified in the present case. The defendant made a manifest error of assessment by deciding that an aid scheme requiring a company-wide decrease in turnover of at least 30 % was compatible with the internal market pursuant to Article 107(3)(b) TFEU. The application of the aid scheme at the level of the company would make companies, such as the applicant, which have several business areas that have been affected to varying degrees by the COVID-19 pandemic, with the store-based business having sustained a loss in turnover significantly exceeding 30 % due to closure, ineligible to apply solely because another business area does not sustain any losses in turnover and the calculation of an arithmetic mean of the turnover of different business areas leads to the 30 % threshold not being reached. Consequently, those companies, unlike companies with only one business area, might receive aid only for a fraction of the eligible period or none at all and would have to cross-finance the uncovered fixed costs of their closed business area from their other business areas. That leads to a distortion in competition both in relation to competitors in the business area affected by the pandemic and in relation to competitors in the business area unaffected by the pandemic.
 2. The defendant infringed the applicant's procedural rights under Article 108(2) TFEU by not giving the applicant the opportunity to raise its doubts as to the compatibility of the aid scheme with the internal market in the preliminary review procedure.
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