

The applicant claims that the Court should:

- annul the contested decision⁽¹⁾ in so far as it refused application No 1 358 480 for registration of a Community trade mark;
- grant application No 1 358 480 for registration of a Community trade mark;
- in the alternative, refer the case back to the Board of Appeal so that it may give a ruling on the matter;
- order the defendant Office to pay the costs.

Pleas in law and main arguments

Applicant for Community trade mark:

The applicant

Community trade mark sought:

The figurative mark 'AMS Advanced Medical Services' for goods and services in Classes 5, 10 and 42 — Application No 1 358 480.

Proprietor of mark or sign cited in the opposition proceedings:

American Medical Systems, Inc.

Mark or sign cited in opposition:

The UK word mark 'AMS' (No 2 061 585), the figurative mark 'American Medical System' registered in several States of the European Union and the registered word marks 'AMS AMBICOR', 'AMS SECURO-T' and 'AMERICAN MEDICAL SYSTEMS' for goods in Class 10.

Decision of the Opposition Division:

Refusal of the trade mark application in respect of goods in Class 10. Rejection of the opposition in so far as the application concerns goods and services in Classes 5 and 42.

Decision of the Board of Appeal:

Refusal of the trade mark application in respect of certain goods in Class 5 (Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants)

and certain goods and services in Class 42 (hospitals, convalescent homes, sanatoriums; medical, hygienic and beauty care; medical research, bacteriology and chemical research; development of medicines, foodstuffs with pharmaceutical properties and other health care products, and conducting medical and clinical examinations, consultancy and support for others for these activities; scientific and industrial research, in particular medical, bacteriological or chemical research; opticians' services; consultancy for health care professionals in the development, establishing and conducting of therapy programmes and the testing of the aforesaid therapy programmes by means of studies). Dismissal of the opponent's appeal as to the remainder.

Pleas in law:

- No likelihood of confusion within the meaning of Article 8(1) and (2) of Regulation (EC) No 40/94.
- No evidence of use of the opposed marks in the European Community justifying refusal of the application.

⁽¹⁾ Decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in Case R 671/2002-4.

Action brought on 31 December 2003 by SIC-Sociedade Independente de Comunicação, S.A. against the Commission of the European Communities

(Case T-442/03)

(2004/C 71/59)

(Language of the case: Portuguese)

An action against the Commission of the European Communities was brought before the Court of First Instance of the

European Communities on 31 December 2003 by SIC-Sociedade Independente de Comunicação, S.A, established in Carnaxide (Portugal), represented by Carlos Botelho Moniz, Eduardo Maia Cadete and Margarida Rosado da Fonseca, lawyers, with an address for service at Rua Castilho, 75, 1º, 1250-068, Lisbon (Portugal).

The applicant claims that the Court should:

annul the decision of the European Communities C(2003) 3526 (final) of 15 October 2003 on ad-hoc measures applied to RTP by Portugal.

Pleas in law and main arguments

1. Breach of the duty to act diligently and impartially;
2. Errors of fact;
3. No basis for the finding in the contested decision on 'investment costs';
4. Error of law concerning the failure to classify certain measures as State aid;
5. Error of law as to the conditions for the application of Article 86(2) EC.

As regards the breach of the duty of diligence, the applicant maintains that the contested decision represented the final stage in the Commission's failure to act transparently, impartially and diligently in the way it conducted the procedure culminating in the adoption of the decision, which was conducted throughout with a view to justifying the unjustifiable and omitting facts essential for the purpose of an accurate analysis of the way in which RTP 'fulfilled' its public service obligations. It submits that the Commission did not act neutrally and failed to maintain an equal distance between the interests in play, since it did not thoroughly weigh up the legally protected interests prior to taking action.

In relation to the errors of fact, the applicant maintains, in particular, that no regard was had to the additional assistance granted by the State to the public operator in 1998, whilst sums which had not been verified by independent auditors were taken into account as 'investment costs'. In the applicant's submission, the Commission also failed to check that RTP had actually fulfilled its public service obligations.

The applicant claims that there is no basis for taking the 'investment costs' into account in the contested decision, since the Commission fails to state the reasons why it took the relevant sums into account in its final decision and why it, inconsistently, did not take into account the sums in RTP's 'Reports on the Public Service' but those in RTP's financial accounts. It also fails to explain why it was possible to take

into account, as investment costs, sums relating to the acquisition of assets when the auditors confirmed that there was not even any evidence that the assets actually existed.

The applicant argues that the fact that certain measures were found not to constitute State aid within the meaning of Article 87(1) EC amounted to an error of law. Those measures included the exemption from paying fees and emoluments, postponement of the payment of fees for the use of the television broadcasting network and a bond issue.

The applicant also claims that the decision errs in law as regards the application of Article 86(2) EC, given that the Portuguese Government did not award public service television broadcasting to RTP on the basis of a transparent and non-discriminatory procedure.

Furthermore, the Commission did not observe the criteria for applying Article 86(2), which it laid down itself in the 'Communication on the application of State aid rules to public service broadcasting'. The applicant also maintains that, as regards the supply by RTP of a public service, the Commission's decision is not founded on any documentary evidence as to whether RTP actually fulfilled the public-service obligations laid upon it by the State, since, in practice, the facts of the case suggest that, as regards the relevant period, the service which RTP was contractually bound to provide was not properly supplied.

Action brought on 2 January 2004 by Cemender Korkmaz, The Corner House and the Kurdish Human Rights Project against the Commission of the European Communities

(Case T-2/04)

(2004/C 71/60)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 2 January 2004 by Cemender Korkmaz, Flers, (France), The Corner House, Newton, (United Kingdom), and the Kurdish Human Rights Project, London, (United Kingdom), represented by P. Moser, Barrister, and A. Stock, lawyer, with an address for service in Luxembourg.