

Pleas in law and main arguments:

In the contested decision, the Commission initiated the procedure under Article 88(2) of the Treaty declaring that aid granted by Article 5 of Regional Law 22/2000, providing for 'interventions in favour of breeders to confront the epizootic disease of blue tongue', was incompatible with the common market. That law provided for a series of interventions in favour of breeders who had suffered the negative effects of blue tongue.

In support of its claims the applicant pleads the following grounds:

- infringement of essential procedural requirements: The Commission's preliminary investigations for assessing the compatibility of the aid were insufficient in that they did not take account of information available in the notification report and subsequently supplemented by the Region of Sardinia, and in particular of the following circumstances:
 - the aid is not intended for processing undertakings but is a necessary additional compensation for producers' loss of income resulting from higher fixed costs of Cooperatives when distributing net proceeds;
 - the causal relationship between the epizootic disease and the reduction in grants cannot be proven in abstract terms but is dependent on the practical implementation of the aid rules, which are structured in such a way as to exclude the allocation of aid on grounds other than those dependent on blue tongue. The hypothetical grounds referred to for the reduction in grants are insufficient and are contrary to facts known to the European Commission.
 - the cooperatives receiving the aid do not have any flexibility to access alternative sources of supply.
- infringement of the provisions of the EC Treaty and the principles of law relating to its application, in so far as:
 - the Commission infringed the principle of effectiveness by excluding the application of Article 87(2)(b), partly because that provision was not invoked by the Italian authorities. In accordance with that principle, the applicant argues, the Commission should have given sufficient reasons for not applying it, the Italian authorities' failure to invoke it being insufficient.
 - the Commission infringed Article 87(3)(c) by overlooking the fact that the measure now alleged to be incompatible with the common market is identical with the measures approved by the Commission in Decision SG(01) D/285817 of 2 February 2001, concerning Article 3 of Regional Law 22/2000.

Action brought on 7 June 2004 by Indorata-Servicos e Gestao Lda against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-204/04)

(2004/C 217/46)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 7 June 2004 by Indorata-Servicos e Gestao Lda, represented by T Wallentin, lawyer.

The applicant claims that the Court should:

- annul the contested rejection of its application for a Community trade mark and order the Office for Harmonisation in the Internal Market to register the sign 'HAIRTRANSFER' as a Community trade mark for the remaining goods and services which remain the subject of dispute also and to publish that registration;

Pleas in law and main arguments:

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| Community trade mark sought: | The word mark 'HAIRTRANSFER' — Application No 2 619 039. |
| Goods or services: | Goods and services in Classes 8, 22, 41 and 44 (<i>inter alia</i> , electric and non-electric depilation appliances, artificial and real hair, provision of training, in particular arranging and conducting of further-training seminars and hygienic and beauty care, in particular hair care and treatment). |
| Decision contested before the Board of Appeal: | Refusal to register by the examiner. |
| Decision of the Board of Appeal: | Dismissal of the appeal. |
| Pleas in law: | The mark sought is distinctive within the meaning of Article 7(1)(b) of Regulation (EC) No 40/94;

The mark sought is not exclusively descriptive within the meaning of Article 7(1)(c) of Regulation (EC) No 40/94. |