

Decision contested before the Board of Appeal: Refusal to register by the examiner.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: The applicant has shown that the shape of the lighter in respect of which the application for registration as a Community trade mark was made is widely recognised by consumers as belonging to it.

The applicant has established that the shape of the BIC lighter had acquired a distinctive character within the meaning of Article 7 of Regulation (EC) No 40/94.

(¹) Probably R 469/2003-4.

Action brought on 7 July 2004 by Brandt Industries against the Commission of the European Communities

(Case T-273/04)

(2004/C 251/42)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 7 July 2004 by Brandt Industries, established in Rueil-Malmaison (France), represented by Niels Dejean and Christophe Delrieu, lawyers.

The applicant claims that the Court should:

- annul the Commission decision of 16 December 2003 on the aid scheme implemented by France for the takeover of firms in difficulty on the grounds that it does not state adequate reasons as required under Article 253 EC and that it is contrary to Article 14 of Regulation (EC) No 659/1999 (¹) of 22 March 1999;
- order the Commission to pay the costs.

Pleas in law and main arguments

By the decision of 16 December 2003 the Commission concluded that the scheme provided for in Article 44 septies of the Code Général des Impôts (French General Taxation Code) constituted a State aid incompatible with the common market, without prejudice to de minimis aid and aid compatible with the guidelines on aid for regional purposes or with the exemp-

tion rule regarding aid to small and medium-sized undertakings. It ordered France to recover the aid granted.

The applicant contests the Commission decision. It submits that the decision should be annulled on the ground that the decision does not show adequate reasons in light of the requirements of Article 253 EC. In the decision, the Commission itself recognised that it had no specific information on the firms which automatically benefited from the scheme under Article 44 septies of the Code Général des Impôts.

Furthermore, the applicant submits that the contested decision is in breach of Article 14 of Regulation (EC) No 659/1999. The Commission did not take account of the fact that the tax aid to companies formed to take over firms in difficulty had the effect of bringing those companies to propose a higher price for the assets than that which they would have offered if that aid had not existed. Consequently, all or part of the aid was transferred, by way of an increase in the repurchase price of those assets, to the creditors of the firm in receivership, so that the takeover companies could not be regarded as the actual beneficiaries of the entirety of the aid. Reimbursement of the aid received by the takeover companies is not a measure necessary for the return of the competition situation to what it was before the grant of the aid, but, on the contrary, would place the takeover companies in a less favourable position than that in which they would have been without the aid, so that it contravenes the principles of fair competition and of proportionality.

(¹) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88] of the EC Treaty (OJ L 83, p. 1).

Action brought on 9 July 2004 by Jabones Pardo, S.A. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-278/04)

(2004/C 251/43)

(Language of the case: Spanish)

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 9 July 2004 by Jabones Pardo, S.A., established in Madrid, represented by José Enrique Astiz Suárez, of the Madrid Bar.

The applicant claims that the Court should:

- vary the findings of the contested decision as regards the similarity of the signs and the goods, ordering that the opposition be admitted and the application refused in respect of goods in classes 3 and 5; and