

*Pleas in law and main arguments:*

In 2002 the United Kingdom introduced the Aggregates Levy, an environmental tax on certain aggregates. By a decision of the same year the Commission concluded that the Aggregates Levy provisions did not constitute State Aid. Claiming that the competitive position of its members is affected by the Aggregates Levy, the applicant challenged that decision in the context of another case before the Court of First Instance <sup>(1)</sup>.

On 5 January 2004 the United Kingdom notified the Commission of a new Aggregates Levy relief scheme for Northern Ireland. By the contested decision the Commission declared the new scheme compatible with the common market, rejecting the applicant's complaint against it without opening the formal investigation procedure.

In support of its application the applicant submits first of all that the scheme in question violates Articles 23 and 90 EC and could therefore not have been declared compatible with the common market. The applicant further claims that the Commission violated its own environmental guidelines <sup>(2)</sup>, committing in this respect three manifest errors of assessment namely: Considering a 20 % proportion of the levy payable by firms eligible for the relief scheme as significant; mistakenly considering the new relief scheme had been decided when the Aggregate Levy was adopted and mistakenly finding that the levy has an appreciable positive impact in terms of environmental protection.

The applicant also submits that the Commission failed to state reasons in the contested decision, as required by Article 253 EC, violated its obligation to initiate a formal investigation procedure, and violated its procedural obligations in the preliminary investigation.

<sup>(1)</sup> Case T-210/02, notified in OJ C 219, 14.9.2002, p. 23.

<sup>(2)</sup> Community guidelines on State aid for environmental protection OJ C 37, 3.2.2001 p. 3-15.

**Action brought on 31 August 2004 by Koipe Corporación S.L. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)**

**(Case T-363/04)**

(2004/C 284/46)

*(Language in which the application was submitted: Spanish)*

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)(OHIM) was brought before

the Court of First Instance of the European Communities on 31 August 2004 by Koipe Corporación S.L., established in San Sebastián (Spain), represented by Marcos Fernández de Béthen-court, lawyer.

The applicant claims that the Court should:

- annul the decision of the Fourth Board of Appeal of OHIM of 11 May 2004 in Case R-1109/2000-4;
- declare the mark applied for to be invalid or, as the case may be, order refusal of the application for a Community trade mark, No 236.588, 'LA ESPAÑOLA', in respect of all the goods claimed; and
- order OHIM, and any person intervening whose claims are not upheld, to pay the costs.

*Pleas in law and main arguments:*

Applicant for Community trade mark:

Aceites del Sur S.A.

Community trade mark sought:

Figurative mark 'LA ESPAÑOLA' – Application No 236.588 for goods in classes 29 (edible oils and fats) and 30 (mayonnaise made with olive oil)

Proprietor of mark or sign cited in the opposition proceedings:

The applicant, which is the successor to KOIPE S.A., the firm which appeared before the Board of Appeal, as regards ownership of the marks on the basis of which the opposition proceedings were brought.

Mark or sign cited in opposition.

The Community (No 338.681), international (Nos 244.428 and 528.369) and national (Spanish registrations Nos 1.238.745, 1.698.613, 28.270 and 252.738 and United Kingdom registrations Nos 730.990 and 2.043.818 inter alia) figurative marks 'CARBONELL', for goods in class 29 (olive oil and pure olive oil).

Decision of the Opposition Division:

Opposition rejected.

Decision of the Board of Appeal:

Appeal dismissed.

Pleas in law:

Incorrect interpretation of Article 8(1)(b), (2)(c) and (5) of Regulation (EC) No 40/94.