

According to the applicants, the Commission furthermore failed to establish that the development of trade would not be affected by the recapitalisation to such an extent as is contrary to the interest of the Community.

Thirdly, the applicants submit that the Commission infringed Article 86(2) EC, the Protocol, and the Broadcasting Communication when it failed to establish TV2's net public service costs which could be funded by the State and committed manifest errors of assessment when applying the proportionality test.

Fourthly, the applicants submit that the contested decision infringes Articles 87 and 88 EC and the right to equal treatment as it perpetuates, contrary to the Commission's State aid recovery policy, the unlawful advantage of the illegal aid and the resulting distortion of competition.

Fifthly, the applicants submit that the Commission infringed Article 88(2) EC and Article 4(4) of the Procedural Regulation when it decided not to open the formal investigation procedure giving interested third parties the opportunity to be heard.

Finally, the applicants claim that the Commission infringed Article 253 EC when it failed to properly state its reasons for adopting the contested decision.

<sup>(1)</sup> Commission Decision of 19 May 2004 in case C 2/2003 - State funding of TV2/Denmark

<sup>(2)</sup> OJ L 83, p. 1

<sup>(3)</sup> OJ 2001 C 320, p. 5

**Action brought on 7 January 2004 by Castell del Remei S.L against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)**

**(Case T-13/05)**

(2005/C 69/43)

(Language of the case: Spanish)

the Court of First Instance of the European Communities on 7 January 2004 by Castell del Remei S.L, represented by Jorge Grau Mora and Alejandro Angulo, of the Barcelona Bar; Maria Baylos Morales and Antonio Velazquez Ibanez, of the Madrid Bar; Fernand de Visscher, Emmanuel Cornu, Eric de Gryse and Donatienne Moreau, of the Brussels Bar, lawyer.

The applicant claims that the Court should:

1. set aside the decision of the First Board of Appeal, of 27 October 2004, delivered in Case R 0691/2003-1; and

2. order OHIM to pay the costs.

*Pleas in law and main arguments:*

Applicant for Community trade mark:

The applicant

Community trade mark sought:

Word mark 'ODA' — Application No 1.655.786, for goods in Class 33 (alcoholic beverages, except beers)

Proprietor of mark or sign cited in the opposition proceedings:

Bodegas Roda S.A.

Mark or sign cited in opposition:

International word mark 'RODA' (No 703.486), Spanish word mark 'BODEGAS RODA' (No 1.757.553), 'RODA II' (No 2.006.615), 'RODA I' (No 2.006.616), and Greek national mark 'RODA' (No 137.050) for wines and spirits in Class 33 and the trade name 'BODEGAS RIOJA' for the 'business dedicated to the creation and production of wines'.

Decision of the Opposition Division:

Opposition upheld and application refused.

Decision of the Board of Appeal:

Appeal dismissed.

Pleas in law:

Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94