

Pleas in law and main arguments

Applicant for Community trade mark:	Big Ben Establishment Ltd. The applicant in this case is the purchaser of the application for registration filed by Big Ben Establishment
Community trade mark concerned:	Figurative mark 'Limoncello di Capri' for goods in classes 30 (pastries etc.), 32 (syrups and other lemon based drinks belonging to class 32) and 33 (lemon based liqueurs)
Proprietor of mark or sign cited in the opposition proceedings:	Limiñana y Botella S.L.
Trade mark or sign cited in opposition:	Spanish word mark LIMONCHELO for goods in class 33
Decision of the Opposition Division:	Refuses registration
Decision of the Board of Appeal:	Rejects the appeal
Pleas in law:	Violation of Article 8 (1) (b) of Council Regulation No. 40/94 ⁽¹⁾ .

⁽¹⁾ OJ L 011, 14/01/1994, p. 1

Action brought on 26 May 2005 by the Italian Republic against the Commission of the European Communities

(Case T-211/05)

(2005/C 182/80)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 May 2005 by the Italian Republic, represented by Paolo Gentili, *Avvocato dello Stato*.

The applicant claims that the Court should:

1. annul Commission decision C (2005) 591 final;
2. order the Commission to pay the costs.

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The action concerns Commission decision C (2005) 591 final which declared incompatible with the common market, as State aid contrary to Article 87 EC, two Italian tax measures granted to companies obtaining listing on regulated markets in the period stated in the measures themselves. Those measures reduce the rate of income tax for three years and exclude from taxable income the costs of the listing borne by the company.

According to the Commission, the measures in question are selective since they favour only those companies obtaining listing in the period stated in the Italian rules, excluding those already listed and those which might be listed in different periods; the measures cannot therefore be regarded as compatible since they do not come within any of the cases laid down in Article 87(2) and (3) EC.

The Italian Government criticises the decision, first, from the procedural point of view, since the Commission initiated the procedure provided for in Article 88(2) EC without discussing the measures with the Member State concerned beforehand.

Secondly, the applicant notes that the Commission did not submit any comments regarding a previous measure adopted by Italy in 1997, which was essentially the same.

Thirdly, the applicant denies that the measures are selective. In fact they are directed at a potentially indefinite number of recipients. On the other hand, the measures are consistent with the tax system as a whole, since they take account of the fact that, in order to be listed, a newly quoted company must bear very heavy charges which place it in a situation of reduced earning capacity compared both with unquoted companies and those which have been quoted for some time and have been able to write off those costs. The limited time period is the result of budgetary constraints and the experimental nature of the measure. That factor cannot, in itself, render selective a measure which is inherently not so.

Fourthly, the applicant denies that the Commission has demonstrated that the measure is likely to distort competition and affect trade between Member States.

Fifthly and finally, the applicant argues that if the measure is defined as aid, it is compatible with the common market within the meaning of Article 87(3)(c). It is aid for investments rather than for operations, and is consistent with the specific economic objective of promoting the listing of companies on the stock exchange which is beneficial for efficiency, transparency and the competitiveness of the system.