

Action brought on 12 January 2006 — FAB Fernsehen aus Berlin v Commission

(Case T-8/06)

(2006/C 86/62)

Language of the case: German

Parties

Applicant: FAB Fernsehen aus Berlin GmbH (Berlin, Germany) (represented by: A. Böken, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

- annul the decision of the Commission of the European Communities (C(2005) 3903 final) of 9 November 2005 (State aid which the Federal Republic of Germany has implemented for the introduction of digital terrestrial television (DVB-T) in Berlin-Brandenburg).

Pleas in law and main arguments

The applicant is challenging Commission Decision C(2005) 3903 final of 9 November 2005 on the State aid for the introduction of digital terrestrial television (DVB-T) in Berlin-Brandenburg. In the contested decision the Commission stated that the aid granted to the commercial broadcasters participating in DVB-T was incompatible with the common market and ordered the Federal Republic of Germany to recover from the beneficiaries, and thus also from the applicant, the aid which was unlawfully made available to them.

In support of its action the applicant submits that the subsidy granted does not amount to State aid under Article 87(1) EC. Furthermore, there is no aid, since the conditions laid down in Article 86(2) EC are not met. The applicant also submits that the measure in dispute does not affect trade between Member States and, consequently, the contested decision is unlawful in that respect.

In support of its action the applicant also submits that, if the subsidy were to be regarded as aid within the meaning of Article 87(1) EC, it would be compatible with the common market pursuant to Article 87(3) EC. In that regard, the applicant alleges that the defendant exceeded the discretion which it has when deciding whether a subsidy may be regarded as

compatible with the common market under Article 87(3)(c) and (d) EC.

Action brought on 16 January 2006 — K-Swiss/OHIM

(Case T-14/06)

(2006/C 86/63)

Language of the case: English

Parties

Applicant: K-Swiss (Westlake Village, USA) [represented by: H. E. Hübner, lawyer]

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

- Annul the decision of the First Board of Appeal of the OHIM of 26 September 2005 (Case R 1109/2004-1);
- order the OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: A figurative mark representing a shoe with five parallel stripes placed on the side for goods in class 25 (shoes for men, women and children) — application No 2 788 511

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the combination of the characteristic elements of the mark applied for is inherently capable of distinguishing the goods of the applicant from those of others. Breach of the principle of non-discrimination as the OHIM allowed the registration of among others a figurative mark representing a shoe with two parallel stripes placed on the front of the shoe.