

*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 on the State aid which the Federal Republic of Germany has implemented for the introduction of digital terrestrial television (DVB-T) in Berlin-Brandenburg;
- order the defendant to pay the costs of the proceedings.

### 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 the aid which was unlawfully made available to them. The applicant is expressly referred to as an issuer of aid in the contested decision.

In support of its action the applicant puts forward three pleas in law.

First, it states that the contested decision errs in law as essential formal requirements have been infringed. The Commission has, in particular, infringed the obligation to state reasons as it has not explained comprehensively why this should be regarded as a case involving State aid.

Second, the applicant alleges infringement of Article 87 EC. On the one hand, it contends that there is no aid within the meaning of Article 87(1) EC. On the other hand, it claims that if there has in fact been aid, that would be compatible with the common market under Article 87(3)(c) and (d).

Finally, the applicant bases its action on the fact that the contested decision infringes Article 86(2) EC since, in so far as there has been aid, that would be compatible with the common market.

### Action brought on 24 January 2006 — RheinfelsQuellen H. Hövelmann v OHIM

(Case T-28/06)

(2006/C 86/67)

*Language in which the application was lodged: German*

### Parties

*Applicant:* RheinfelsQuellen H. Hövelmann GmbH & Co. KG (Duisburg, Germany) (represented by W. Kellenter and A. Lambrecht, Rechtsanwälte)

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

### Form of order sought

The applicant claims that the Court should:

- annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 17 November 2005 in Appeal No R 1179/2004-2;
- order the defendant to pay the costs incurred by the applicant.

### Pleas in law and main arguments

*Community trade mark concerned:* the word mark 'VOM URSPRUNG HER VOLLKOMMEN' for goods in Classes 32 and 33 — Application No 2 806 875

Decision of the Examiner: registration rejected

Decision of the Board of Appeal: appeal rejected

*Pleas in law:* breach of Article 7(1)(b) and (c) of Council Regulation No 40/94, since the trade mark does not consist of exclusively descriptive elements and is also not devoid of any distinctive character.

### Action brought on 24 January 2006 — Procter & Gamble v OHIM

(Case T-29/06)

(2006/C 86/68)

*Language of the case: English*

### Parties

*Applicant:* The Procter & Gamble Company (Cincinnati, USA) [represented by: G. Kuipers, 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 22 November 2005 (Case R 1071/2004-1), which was notified to P&G by letter of 5 December 2005, in so far as it finds that the mark does not satisfy the conditions as laid down in Article 7(1)(b) of Regulation No 40/94; and