

- in the alternative, declare that on the date on which this action is brought there is no obligation on Poland to recover the aid and interest referred to in Article 3 of the decision and that the amounts of that aid and interest are therefore not payable;
- in the further alternative, annul the second subparagraph of Article 3(2) of the decision and refer the question of interest back to the Commission for a fresh decision in accordance with Annex A to this application or with such other consideration as the Court may indicate in the grounds of its judgment;
- in any event, order the Commission to pay all of the costs;
- if the Court should decide that there is no need to adjudicate, order the Commission to pay the costs pursuant to the combined provisions of Article 87(6) and Article 90(a) of the Rules of Procedure of the Court of First Instance.

Pleas in law and main arguments

By its decision C (2005) 1962 final of 5 July 2005 (State Aid No C 20/04, ex NN 25/04) the Commission declared certain restructuring aid granted by Poland to the steel producer Huta Częstochowa S.A. to be incompatible with the common market and ordered its recovery. The applicant is one of the successors to the aid beneficiary which, in the context of the restructuring of Huta Częstochowa S.A., received certain assets and liabilities from that company to be bought up subsequently by the company Industrial Union of Donbass through its subsidiary ISD Polska. The applicant is included in the contested decision among the companies required jointly and severally to repay the aid declared incompatible with the common market.

In support of its action for the partial annulment of the decision, the applicant relies on four pleas in law.

By its first plea, it claims that the Commission made a manifest error of assessment of the facts decisive for the outcome of the investigation. It maintains that, once the assets of the original beneficiary of the incompatible aid are sold, those assets having been bought by ISD Polska (and Donbass), it is the vendor of the original aid beneficiary that retains the benefit of that aid and must ensure that it is repaid. The applicant claims that in this case, if the Commission had correctly established the relevant facts concerning the sale of the assets of Huta Częstochowa, through, among others, Majątek Hutniczy, to ISD Polska (and Donbass), it would have come to the view that, because the means of production of Huta Częstochowa were acquired at a price reflecting the market price, restitution of the aid would thereby already have been made to the vendor. According to the applicant, the Commission was therefore in breach of its obligation to examine, carefully and impartially, all the relevant facts of the case.

By its second plea, the applicant claims that the Commission infringed Protocol No 8 to the Treaty of Accession, on the restructuring of the Polish steel industry⁽¹⁾, by interpreting purely literally certain of its provisions which, in the view of the applicant, it should have interpreted in the light of the objectives pursued by that protocol and in consideration of the background to its adoption. That allegedly incorrect interpreta-

tion led the Commission to require, by its decision, repayment of State aid received before the adoption of Protocol No 8 by companies not included in Annex 1, which designates eight beneficiary companies which are eligible for aid from Poland in derogation from Articles 87 EC and 88 EC. It also claims that, as Protocol No 8 does not expressly state that it applies retroactively for a specific period, the Commission's interpretation of that protocol infringed several general principles such as those of non-retroactivity and of legal certainty. The applicant claims that Protocol No 8, on a correct interpretation, does not empower the Commission to call for the repayment of State aid received before its adoption by companies not referred to in Annex 1. It thus concludes that, having acted in that way without a legal basis, the Commission encroached upon the temporal competence of other Community institutions.

The third plea, invoked as an alternative plea if the Court should find that the Commission has properly established the facts and correctly interpreted Protocol No 8, alleges infringement of Article 14(1) of Regulation No 659/1999⁽²⁾. The applicant submits that, by adopting the decision to recover the aid, the Commission is acting at variance with the principles of equal treatment, legitimate expectations and legal certainty.

By its fourth plea, the applicant submits, in support of its alternative request for annulment of the second subparagraph of Article 3(2) of the contested decision, that the Commission infringed Regulation No 794/2004⁽³⁾ when calculating the interest rate applicable to the recovery of the aid in the present case.

⁽¹⁾ OJ 2003 L 236, p. 948.

⁽²⁾ Council Regulation (EC) No 659/1999 of 22 March 1999, laying down detailed rules for the application of Article 93 of the EC Treaty, (OJ 1999 L 83, p.1).

⁽³⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, (OJ L 140 of 30.4.2004, p. 1).

Action brought on 18 October 2006 — Agencja Wydawnicza Technopol v OHIM (1000)

(Case T-298/06)

(2006/C 310/49)

Language of the case: English

Parties

Applicant: Agencja Wydawnicza Technopol sp. z o.o. (Częstochowa, Poland) (represented by: V. von Bomhard, A. Renck and T. Dolde, lawyers)

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

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 August 2006 in case No R 447/2006-4; and
- order that the costs of the proceedings be borne by the defendant.

Pleas in law and main arguments

Community trade mark concerned: Word mark '1 000' for goods and services in classes 16, 28 and 41 — application No 4 372 264

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Violation of Article 7(1)(b) of Council Regulation No 40/94 as numerals in principle, according to the applicant, are not devoid of distinctive character and can function as an indication of origin in the same way as words.

Violation of Article 7(1)(c) of the regulation as the trade mark applied for is not descriptive since consumers confronted with the trade mark '1 000' on printed articles will not be able to deduct any information about the characteristics of the goods concerned.

Action brought on 4 September 2006 — Promat v OHIM — Puertas Proma (Promat)

(Case T -300/06)

(2006/C 310/50)

Language in which the application was lodged: German

Parties

Applicant: Promat GmbH (Ratingen, Germany) (represented by: J.Krenzel)

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

Other party to the proceedings before the Board of Appeal of OHIM: Puertas Proma, S.A.L.

Form of order sought

- amend the defendant's decision of 4 May 2006 (Ref. R 1058/2005-1) so as to allow the appeal in full;
- order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant.

Community trade mark concerned: the word mark 'Promat' for goods and services in Classes 1, 2, 6, 17, 19, 20 and 42 (Application No 803 825).

Proprietor of the mark or sign cited in the opposition proceedings: Puertas Proma, S.A.L.

Mark or sign cited in opposition: in particular, the figurative mark 'PROMA' for goods and services in Classes 6, 20 and 39 (Community trade mark No 239 384), the opposition being directed against the application in respect of Classes 6, 19 and 20.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: breach of Article 8(1)(a) and (b) of Regulation (EC) No 40/94 ⁽¹⁾, on the ground that neither the opposing signs nor the opposing goods are similar. Therefore there is no likelihood of confusion between the opposing marks.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 6 November 2006 — Hartmann v OHIM (E)

(Case T-302/06)

(2006/C 310/51)

Language of the case: German

Parties

Applicant: Paul Hartmann Aktiengesellschaft (Heidenheim, Germany) (represented by K. Gründig-Schnelle, lawyer)

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

Form of order sought

- annul the contested decision
- order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings

Pleas in law and main arguments

Community trade mark concerned: The word mark 'E' for goods in Classes 5, 10 and 25 — Application No 4 316 949

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 Regulation No 40/94.