

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'FVB' for services in Classes 35 and 36 (Application No 2 126 175).

Proprietor of the mark or sign cited in the opposition proceedings: FVD Gesellschaft für Finanzplanung und Vorsorgemanagement Deutschland mbH.

Mark or sign cited in opposition: The German word mark 'FVD' for services in Class 36, the opposition being brought against the registration in Class 36.

Decision of the Opposition Division: Opposition granted, partial rejection of the application.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: The contested decision infringes Article 8(1)(b) of Regulation (EC) No 40/94 ⁽¹⁾ since 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 L 11, 1994, p. 1).

Action brought on 12 January 2007 — Frucona Košice v Commission

(Case T-11/07)

(2007/C 56/68)

Language of the case: English

Parties

Applicant: Frucona Košice a.s. (Košice, Slovak Republic) (represented by: B. Hartnett, O. Geiss, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annul Commission's Decision C(2006)2082 final, of 7 June 2006, in state aid Case No C25/2005;
- annul in whole or in part Article 1 of the said decision;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

By means of its application, the applicant seeks annulment of the Commission decision of 7 June 2006 on state aid imple-

mented by the Slovak Republic for the applicant (C25/2005), insofar as it treats the applicant as a recipient of incompatible state aid and compels it to repay to the Slovak Republic the entirety of the tax write-off with interest.

In support of its action, the applicant relies on the following ten pleas in law:

By its first plea, the applicant claims that the Commission manifestly erred when determining the amount of the alleged state aid.

By its second plea, the applicant submits that the contested decision violates an essential procedural requirement and fails to have regard to Article 33 EC. In fact, the applicant contends it is DG Agriculture and not DG Competition which was the competent directorate to carry out the investigation and take the procedural and formal steps that led to the contested decision.

By its third plea, the applicant further submits that the contested decision violates Section 3, Annex IV of the Treaty of Accession, Article 253 EC, Article 88 EC and Regulation 659/1999 because the Commission lacked jurisdiction to issue the contested decision.

By its fourth plea, the applicant contends that the Commission has erred in fact and in law in applying Article 87(1) EC when it found bankruptcy proceedings to be more favourable than the tax settlement.

By its fifth plea, the applicant alleges that the Commission further erred by finding the tax execution procedure to be more beneficial than the tax settlement.

By its sixth plea, the applicant submits that the Commission manifestly erred in law and in fact by failing to discharge the burden of proof thereby violating Article 87(1) EC and Article 253 EC. In addition, the applicant submits that the Commission disregarded the legal standards set forth by the Court on the application of the private creditor test.

By its seventh plea, the applicant claims that the Commission erred in law and fact by failing to adequately assess and have regard to the evidence at its disposal.

By its eighth plea, the applicant alleges that the Commission erred in law and in fact by taking into account irrelevant evidence such as internal differences within the tax administration.

By its ninth plea, the applicant further submits that the decision violates Article 253 EC by lacking sufficient reasoning to justify its conclusions.

Lastly, by its tenth plea, the applicant alleges that the Commission erred by not exempting the tax settlement as restructuring aid and by retroactively applying the 2004 Restructuring Guidelines.