

Pleas in law: Infringement of Article 8(1)(b) and (4) of Council Regulation No 40/94 as the Board of Appeal wrongly decided that the applicant's non registered trade mark did not confer on him the right to prohibit the use in the United Kingdom of the trade mark applied for and as the Board of Appeal wrongly applied the test to establish likelihood of confusion.

Action brought on 16 April 2007 — Italy v Commission

(Case T-119/07)

(2007/C 129/41)

Language of the case: Italian

Parties

Applicant: Italian Republic (Rome, Italy) (represented by: G. Aiello, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- annul Commission Decision C (2007) 286 final of 7 February 2007;
- order the Commission to pay the costs.

Pleas in law and main arguments

The action is brought against Decision C (2007) 286 final of 7 February 2007 concerning the exemption from excise duty on mineral oils used as fuel for alumina production in the Gardanne region, in the Shannon region and in Sardinia applied by France, Ireland and Italy respectively. That decision declared lawful 80 % of the amount of the tax exemptions granted by the Italian Government to Euroallumina SpA, requiring recovery

of the remaining 20 % of the amount of relief accorded to the beneficiary from 1 January 2004.

In support of its claims, the applicant pleads:

- Infringement of Article 87(1) of the Treaty, in so far as the contested decision held that the exemption from the excise duty provided for in the Italian system is State aid. It is stated in that respect that, as confirmed by the wording of Directive 2003/96/EC ⁽¹⁾, the exemptions from excise duty in question do not constitute State aid but come within the nature and the logic of the national tax system. In fact, if they were State aid the directive cited expressly authorises said aid, at least for a period until 31 December 2006. With regard to the alleged selective character of the measures under consideration, it is observed that the same are addressed in general to all businesses using mineral oils for the production of aluminium oxide. The fact that there is only one plant in Italy at which such mineral oils are used in the production cycle is of purely factual relevance and is not capable of undermining the general scope of the provision.
- Infringement of Article 87(3) of the Treaty and of the Community guidelines on national regional aid for 1998, since the contested exemption from excise duty in issue in the present case is to be regarded as necessary for the economic development of the region of Sardinia.
- Infringement of point 51 of E. 3.2 of the Community guidelines on State aid for environmental protection (2001/C 37/03), in so far as in the present case there were specific agreements between the State granting the aid and the recipient firm on the improvement of environmental results.
- Finally, infringement of the principle of the protection of legitimate expectations and the presumption of the legality of Community provisions.

⁽¹⁾ Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283 of 31.10.2003, p. 51).