

Pleas in law: The applicant claims that the contested decision is vitiated by an essential procedural requirement in respect of Article 74 CTMR and the burden of proof. According to the applicant, in revocation proceedings, the burden of proof in respect of genuine use lies with the proprietor of the trade mark. Moreover, the applicant submits that the Office cannot examine the facts on its own motion but its examination should be confined to the assessment of the facts, evidence and arguments provided by the parties and the relief sought. Thus, the applicant claims that the Board's communication of 18 October 2006 on the basis of which the trade mark proprietor was invited to submit the originals of specific statutory declarations should be declared inadmissible, in particular since the Board had previously found the initial evidence submitted by the trade mark proprietor to be insufficient to establish genuine use.

Furthermore, the applicant claims that the said originals were not submitted within the required deadline, in accordance to Article 74(2) CTMR and therefore should not be admitted.

In addition, the applicant submits that the Board erred in its interpretation of the concept of genuine use infringing thereby Article 15 CTMR.

Action brought on 23 May 2007 — Mediaset v Commission

(Case T-177/07)

(2007/C 170/60)

Language of the case: English

Parties

Applicant: Mediaset SpA (Milan, Italy) (represented by: D. O'Keeffe, Solicitor, K. Adamantopoulos and G. Rossi, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annul, on the basis of Article 230 of the EC Treaty, (ex Article 173), the Commission's decision of 24 January 2007 on the State aid C 52/2005 which the Republic of Italy has implemented in relation to the subsidy of digital decoders in Italy, in particular Articles 1 to 3 thereof;
- order that all the costs occasioned by the applicant in the course of the present proceedings be borne by the defendant.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(2006) 6634 final ⁽¹⁾ of 24 January 2007 by which the Commission found that the scheme put in place by Italy in

favour of digital terrestrial broadcasters offering Pay-TV services and cable Pay-TV operators constitutes State aid which is incompatible with the common market.

The applicant, who is a beneficiary of the State aid in question, invokes the following pleas in law.

First of all, the applicant submits that the Commission committed an error of law in the application and interpretation of Article 87(1) EC insofar as i) the Commission considered aid granted directly to the consumers to fall within the ambit of Article 87(1) EC; ii) the Commission concluded that the measure conferred a selective 'economic advantage' on the applicant; iii) the Commission concluded that the measure is selective because it allegedly is discriminatory, and iv) the Commission considered the measure to distort competition in the common market.

The applicant furthermore claims that the Commission committed a manifest error of appraisal and a manifest error of law by concluding that the measure was not compatible with the common market pursuant to Article 87(3)(c) EC.

Moreover, the applicant alleges that the Commission infringed an essential procedural requirement by giving contradictory and insufficient reasoning contrary to Article 253 EC.

Finally, the applicant argues that the Commission infringed Article 14 of Council Regulation No 659/1999 ⁽²⁾ in ordering recovery of the measure, because it failed to see that i) the applicant had legitimate expectations to assume the alleged aid was lawful and ii) because it is impossible to establish the amount of the aid and identify the potential indirect beneficiaries.

⁽¹⁾ C 52/2005 (ex NN 88/2005, ex CP 101/2004).

⁽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).

Action brought on 21 May 2007 — Euro-Information v OHIM

(Case T-178/07)

(2007/C 170/61)

Language of the case: French

Parties

Applicant: Société Européenne de traitement de l'Information SAS (Strasbourg, France) (represented by P. Greffe and J. Schouman, lawyers)

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