

## COURT OF FIRST INSTANCE

### Judgment of the Court of First Instance of 12 February 2008 — BUPA and Others v Commission

(Case T-289/03) <sup>(1)</sup>

*(State aid — Risk equalisation scheme introduced by Ireland on the private medical insurance market — Aid system — Services of general economic interest — Article 86(2) EC — Commission decision not to raise objections — Action for annulment — Admissibility — Principles of necessity and proportionality)*

(2008/C 79/48)

Language of the case: English

#### Parties

*Applicants:* British United Provident Association Ltd (BUPA) (London, United Kingdom); BUPA Insurance Ltd (London); and BUPA Ireland Ltd (Dublin, Ireland) (represented by: N. Green QC, K. Bacon and J. Burke, Barristers, and B. Amory, lawyer)

*Defendant:* Commission of the European Communities (represented by: initially N Khan and J. Flett, then N. Kahn and T. Scharf, Agents)

*Interveners in support of the defendant:* Kingdom of the Netherlands represented by: N. Bel, Agent; Ireland (represented by: D. O'Hagan, Agent, with G. Hogan SC and E. Regan, Barrister); and Voluntary Health Insurance Board (Dublin) (represented by: D. Collins, G. FitzGerald and D. Clarke, Solicitors, and P. Gallagher SC)

#### Re:

Application by, *inter alia*, BUPA Ireland Ltd, a provider of private medical insurance services in Ireland, for annulment of the Commission's Decision C(2003)1322 final of 13 May 2003 not to raise objections under Article 4(2) and (3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88 EC] (OJ 1999 L 83, p. 1), concerning the establishment of a risk equalisation scheme (RES) in the Irish health insurance market (State aid N 46/2003 — Ireland).

#### Operative part of the judgment

The Court:

1. Dismisses the application;
2. Orders British United Provident Association Ltd (BUPA), BUPA Insurance Ltd and BUPA Ireland Ltd to bear their own costs and to pay the costs incurred by the Commission and the Voluntary Health Insurance Board;

3. Orders Ireland and the Kingdom of the Netherlands to bear their own costs.

<sup>(1)</sup> OJ C 264, 1.11.2003.

### Judgment of the Court of First Instance of 14 February 2008 — Orsay v OHIM — Jiménez Arellano (O orsay)

(Case T-39/04) <sup>(1)</sup>

*(Community trade mark — Opposition procedure — Application for the word and figurative trade mark O orsay — Earlier national word and figurative trade mark D'ORSAY — Ground for refusal — Risk of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)*

(2008/C 79/49)

Language of the case: German

#### Parties

*Applicant:* Orsay GmbH (Willstät, Germany) (represented by: D. von Schultz and S. Elbe, lawyers)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially, by: U. Pefghar, later by: G. Schneider, Agents)

*Other party to the proceedings before the Board of Appeal of OHIM:* José Jiménez Arellano S.A. (Madrid, Spain) (represented initially, by: J. Astiz Suárez, later by: S. Hernán-Carrillo Portolés and finally by: A. Tarí Lázaro, lawyers)

#### Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 3 November 2003 (Case R 394/2002-4) concerning an opposition procedure between José Jiménez Arellano S.A. and Orsay GmbH.

#### Operative part of the judgment

1. The application is dismissed;
2. Orsay GmbH is ordered to pay the costs.

<sup>(1)</sup> OJ C 106 of 30.4.2004.