

Pleas in law and main arguments

In the present case, the applicants seek partial annulment of Commission Decision 2008/166/EC, State Aid No C 39/06 (ex NN 94/2005) of 13 November 2007 concerning the First Time Shareholders Scheme implemented by the United Kingdom ⁽¹⁾. In the contested decision the Commission found that the aid was incompatible with the common market as far as it concerned aid granted for the first time acquisition of a share in a second-hand fishing vessel and required the United Kingdom to recover the aid granted. The applicants are the beneficiaries of the aid to be recovered.

The applicants seek annulment of the contested decision on the following grounds:

- The Commission erred in law in finding that all payments made for first time acquisition of a share in a second-hand fishing vessel were incompatible with the common market and had to be repaid; the applicants claim that the awarded grants fall within the scope of Commission Regulation 875/2007 ⁽²⁾ and should be therefore considered *de minimis* aids compatible with the common market; they claim that Articles 1(2) and Articles 3 to 5 of the contested decision unlawfully extend to beneficiaries of aid who complied in substance with the relevant Community guidelines;
- The Commission erred in law in finding that the recovery of these payments would be compatible with Article 14(1) of Council Regulation (EC) No 659/1999 ⁽³⁾ as well as with the general principles of legal certainty and the protection of legitimate expectations and of equality of treatment.

⁽¹⁾ OJ 2008 L 55, p. 27.

⁽²⁾ Commission Regulation (EC) No 875/2007 of 24 July 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the fisheries sector and amending Regulation (EC) No 1860/2004, OJ 2007 L 193, p. 6.

⁽³⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (O) 1999 L 83, p. 1).

Action brought on 9 June 2008 — *Habanos v OHIM* — *Tabacos de Centroamérica*

(Case T-207/08)

(2008/C 209/101)

Language in which the application was lodged: Spanish

Parties

Applicant: Corporación Habanos, SA (Ciudad de la Habana, Cuba) (represented by: V. Gil Vega and A. Luiz López, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Tabacos de Centroamérica, SL (Pozuelo de Alarcón, Spain)

Form of order sought

- Annul the decision of the Second Board of Appeal of the OHIM of 31 March 2008, and declare that there is a similarity, and a likelihood of confusion, between the composite mark KIOWA and the earlier composite marks COHIBA, which designate identical profits, and a intent, on the part of the applicant for registration, of undue profit from/detriment to the distinctive character and or the reputation of the earlier COHIBA marks cited, and thus refuse registration of the Community mark No 3.963.931 KIOWA (composite); or, in the alternative, annul the decision of the OHIM referred to, and order that the file be sent back to the Second Board of Appeal of the OHIM so that the claims and evidence relating to Article 8(5) of Regulation 40/94 be analysed and examined, and
- order OHIM to pay the costs of all instances, including the fees of the applicant's representatives.

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Applicant for a Community trade mark: Tabacos de Centroamérica, SL

Community trade mark concerned: Figurative mark 'KIOWA' in respect of goods in Class 34 (application No 3.963.931)

Proprietor of the mark or sign cited in the opposition proceedings: Corporación Habanos, SA, which operates under the business name of Habanos, SA.

Mark or sign cited in opposition: Figurative mark 'COHIBA' (Community mark No. 3.323.292), word mark 'COHIBA' (Spanish mark No 1.271.173) and the figurative mark 'COHIBA' (Spanish mark No 2.052.344) in respect of products in Class 34.

Decision of the Opposition Division: Dismissal of the opposition.

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

Pleas in law: In particular, a high level of similarity between the opposing marks, resulting in a risk of confusion.