

**Form of order sought**

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 June 2008 (Case R 1076/2007-1); and
- order the defendant to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* Word mark '1-2-3.TV' for services in classes 35, 38 and 41 — Application No 3 763 133

*Proprietor of the mark or sign cited in the opposition proceedings:* Zweites Deutsches Fernsehen and Televersal Film- und Fernseh-Produktion GmbH

*Mark or sign cited in opposition:* National figurative mark '1, 2 ODER 3 ZDF-ORF-SFDRS' for goods and services in classes 3, 5, 9, 12, 14, 16, 18, 21, 24, 25, 26, 27, 28, 29, 30, 32, 35, 38, 41 and 42

*Decision of the Opposition Division:* Opposition partly upheld

*Decision of the Board of Appeal:* Appeal dismissed

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 40/94, there being no likelihood of confusion between the marks in opposition on account of the differing overall impression of the marks.

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**Action brought on 6 October 2008 — Freistaat Sachsen and Land Sachsen-Anhalt v Commission**

(Case T-443/08)

(2008/C 327/63)

*Language of the case:* German

**Parties**

*Applicants:* Freistaat Sachsen and Land Sachsen-Anhalt (represented by: U. Soltész, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Annul Article 1 of the Commission's decision of 23 July 2008 pursuant to the first paragraph of Article 231 EC in so far as the Commission finds that

(a) the measure adopted by Germany in respect of capital contributions for the construction of a new southern runway and related airport infrastructure at Leipzig/Halle airport constitutes State aid for the purposes of Article 87(1) EC; and

(b) this 'State aid' amounts to EUR 350 million;

- order the Commission to pay the applicants' costs pursuant to Article 87(2) of the Rules of Procedure of the Court of First Instance.

**Pleas in law and main arguments**

The applicants object to the findings in the first part of Article 1 of Commission Decision C (2008) 3512 final of 23 July 2008 Measure No C48/2006 (ex N227/2006) Germany DHL and Leipzig Halle Airport that the capital contributions granted by Germany to Leipzig/Halle airport represent State aid to the airport and that that aid amounts to EUR 350 million.

The applicants rely on seven pleas in law in support of their claims:

First, the applicants submit that the rules on State aid are not even applicable because the airport is not an undertaking within the meaning of those rules, so far as the expansion of regional airport infrastructure is concerned.

Second, Flughafen Leipzig/Halle GmbH is a State-owned single purpose vehicle with an organisational structure governed by private law which, accordingly, as is generally acknowledged, cannot be deemed to be a recipient of aid in so far as the State provides it with the resources required in order to perform its functions.

Third, the contested decision is inherently contradictory, in that Flughafen Leipzig/Halle GmbH is simultaneously treated in the decision both as recipient and donor of aid.

Fourth, the application of the guidelines published in 2005<sup>(1)</sup> to facts which obtained before the guidelines were published is contrary to the prohibition on retroactivity, the requirement of legal certainty, the protection of legitimate expectations and the principle of equality. In the applicant's view, only the Commission's 1994 guidelines<sup>(2)</sup> were applicable.

In addition, the applicants state that the new guidelines are contrary to primary Community law, being factually inapplicable and inherently contradictory where regional airport operators do not have the status of an undertaking. The 2005 guidelines also made the construction of airports subject to the rules on aid, whereas, in the previous guidelines of 1994, this activity was expressly excluded from the application of the State aid rules. In view of the diametrically opposed content of the old and the new guidelines, and the non-revocation of the 1994 provisions, it is unclear how the financing of airport infrastructure is intended to be legally assessed.

Sixth, the applicants submit that the Commission has committed a breach of procedure since it failed to apply the provisions of Regulation No 659/1999 <sup>(3)</sup> on existing aid to the capital contributions which it deemed to be aid.

Seventh, the 2005 guidelines also circumvent the division of powers between the Member States and the Commission, since the Commission is extending its powers beyond the framework laid down in the EC Treaty by adopting an expanded interpretation of the essential criterion of 'undertaking' in Article 87 (1) EC and, as a result of this expanded interpretation, making procedures which are within the administrative competence of national authorities subject to review by the Community institutions.

<sup>(1)</sup> Communication from the Commission — Community Guidelines on financing of airports and start-up aid to airlines departing from regional airports, OJ 2005 C 312, p. 1.

<sup>(2)</sup> Communication from the Commission — Application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector, OJ 1994 C 350, p. 7.

<sup>(3)</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

#### Action brought on 2 October 2008 — S.L.V. Elektronik v OHIM — Jiménez Muñoz (LINE)

(Case T-449/08)

(2008/C 327/64)

*Language in which the application was lodged: German*

#### Parties

*Applicant:* S.L.V. Elektronik GmbH (Übach-Palenberg, Germany) (represented by: C. König, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Angel Jiménez Muñoz (Gelida, Spain)

#### Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 18 July 2008 in Case R 759/2007-4 in so far as registration of the trade mark applied for (003316908) is refused in respect of 'mains-operated lights, lighting apparatus and installations, stage effects lighting apparatus; electric lamps; individual parts for the aforesaid goods'; and order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings before the Court of First Instance.

#### Pleas in law and main arguments

*Applicant for a Community trade mark:* S.L.V. Elektronik GmbH

*Community trade mark concerned:* Figurative mark 'LINE' for goods in class 11 — registration No 3 316 908

*Proprietor of the mark or sign cited in the opposition proceedings:* Angel Jiménez Muñoz

*Mark or sign cited in opposition:* National figurative and word marks 'Line' for goods and services in classes 9, 35, 37 and 38

*Decision of the Opposition Division:* Opposition upheld

*Decision of the Board of Appeal:* Annulment in part of the decision of the Opposition Division

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 40/94, as there is no likelihood of confusion between the marks in opposition. Furthermore, the Board of Appeal did not proceed on the basis of the trade mark applied for but on the basis of a design that was not identical.

#### Action brought on 6 October 2008 — Mitteldeutsche Flughafen and Flughafen Leipzig/Halle v Commission

(Case T-455/08)

(2008/C 327/65)

*Language of the case: German*

#### Parties

*Applicants:* Mitteldeutsche Flughafen AG (Leipzig, Germany), Flughafen Leipzig/Halle GmbH (Leipzig, Germany) (represented by: M. Núñez-Müller, lawyer)

*Defendant:* Commission of the European Communities

#### Form of order sought

— Annul Article 1 of the Commission's decision of 23 July 2008 (C(2008) 3512 final) pursuant to the first paragraph of Article 231 EC in so far as the Commission finds that

(a) the measure adopted by Germany in respect of capital contributions for the construction of a new southern runway and related airport infrastructure at Leipzig/Halle airport constitutes State aid for the purposes of Article 87(1) EC; and

(b) this 'State aid' amounts to EUR 350 million;

— order the Commission to pay the costs of the proceedings, including the applicants' costs, pursuant to Article 87(2) of the Rules of Procedure of the Court of First Instance.