

- infringement of Article 87(2)(b) EC and of the guidelines applicable to State aid in the agricultural sector, and breach of the Commission's own working practice — and, in any case, erroneous assessment of the facts and failure to state sufficient reasons — in so far as the Commission found that the financial aid scheme duly notified by the Italian authorities could not be treated as an exception under Article 87(2)(b) EC;
- infringement of Article 87(3)(c) EC — and, in any case, erroneous assessment of the facts and failure to state sufficient reasons — in so far as the Commission found that the financial aid scheme duly notified by the Italian authorities could not be treated as an exception under Article 87(3)(c) EC;
- breach of the principles of sound administration and diligence and of the duty of care, by reason inter alia of the excessive length of the administrative procedure.

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**Action brought on 24 December 2008 — PJ Hungary/  
OHIM v Pepekillo (PEPEQUILLO)**

**(Case T-580/08)**

(2009/C 44/112)

*Language in which the application was lodged: Spanish*

**Parties**

*Applicant:* PJ Hungary Szolgáltató (PJ Hungary kft), (Budapest, Republic of Hungary) (represented by: M. Granado Carpenter and C. Gutiérrez Martínez, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Pepekillo SL (Algeciras, Spain)

**Form of order sought**

- Annul the decision of 30 April 2008 (Case R-722/2007) of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM), which granted the *restitutio in integrum* claimed by PEPEKILLO SL;
- Annul the decision of 24 September 2008 (Case R-722/2007) of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM), which set aside the decision of the Opposition Division of 9 March 2007 and, as a result, granted Community trade mark No 3 546 471 'PEPEQUILLO', and make such other order as is appropriate in accordance with Community law; and

- Order the defendant to pay the costs of the present proceedings, in addition to the costs incurred during the administrative procedure before OHIM.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Marta Sancho Lora, who subsequently assigned the application to the company PEPEKILLO SL.

*Community trade mark concerned:* The word mark 'PEPEQUILLO' (Application No 3.546.471) for goods in classes 18 and 25 and services in class 35.

*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant, to whom the company 'PEPE JEANS N.V.' had assigned its rights.

*Mark or sign cited in opposition:* Spanish word marks 'PEPE' and 'PEPE JEANS', Spanish figurative marks 'PEPE JEANS LONDON', Spanish word marks 'PEPE 2XL', 'PEPE F4', 'PEPE M99', 'PEPE F4', 'PEPE M3', 'PEPE M5' and 'PEPE F6', Spanish figurative marks 'PEPE JEANS LONDON', 'PEPE JEANS 73', 'PEPE JEANS PORTOBELLO', 'PEPE' and Spanish word marks 'PEPE JEANS M2', 'PEPE BETTY', 'PEPE CLOTHING' and 'PEPECO', for goods in classes 3, 9, 14, 18 and 25; and Community word and figurative marks 'PEPE JEANS' for goods in classes 3, 9, 14 and 18.

*Decision of the Opposition Division:* Opposition upheld and application refused

*Decision of the Board of Appeal:* Pleas in law admitted and appeal upheld.

*Pleas in law:* Incorrect application of Articles 78 and 8(1)(b) and (5) of Regulation No 40/94 on the Community trade mark.

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**Action brought on 31 December 2008 — Fresh Del Monte  
Produce v Commission**

**(Case T-587/08)**

(2009/C 44/113)

*Language of the case: English*

**Parties**

*Applicant:* Fresh Del Monte Produce Inc. (George Town, Cayman Islands) (represented by: B. Meyring, lawyer and E. Verghese, solicitor)

*Defendant:* Commission of the European Communities