

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of Commission Decision C(2008) 7846 final ⁽¹⁾ of 10 December 2008 in which the Commission found that the umbrella scheme likely to be run by the inter-branch organisations of French farmers (organisations interprofessionnelles agricoles françaises), consisting in aids for technical assistance; for the production and marketing of high-quality agricultural products; for research and development, and for advertising which promotes primary producers and undertakings active in the processing and marketing of agricultural products, financed by voluntary levies made compulsory by ministerial decree, levied on members of those inter-branch organisations, constitutes State aid which is compatible with the common market.

The pleas and principal submissions relied upon the by the applicant are substantially the same as, or similar to, those put forward in the context of Cases T-293/09 *CNIEL v Commission*, and T-302/09 *CNIPT v Commission*.

⁽¹⁾ OJ 2009 C 116, p. 14.

Action brought on 6 August 2009 — Earle Beauty v OHIM (NATURALLY ACTIVE)

(Case T-307/09)

(2009/C 244/21)

Language of the case: English

Parties

Applicant(s): Liz Earle Beauty Co. Ltd (Ryde, United Kingdom) (represented by M. Cover, Solicitor)

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

Form of order sought

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 May 2009 in case R 27/2009-2 and declare that the Community trade mark concerned can proceed to publication and registration; and
- Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'NATURALLY ACTIVE' for goods and services in classes 3, 5, 16, 18, 35 and 44

Decision of the examiner: Refused the application for a Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation 40/94 (which became Article 7(1)(b) of Council Regulation 207/2009) as the Board of Appeal erred in its finding that the phrase 'Naturally Active' was normal in the English language and was therefore a laudatory term that could be easily understood by the general public, thus having no inherent distinctiveness; infringement of Article 7(3) of Council Regulation 40/94 (which became Article 7(3) of Council Regulation 207/2009) as the Board of Appeal: (i) was incorrect to find that the trade mark concerned had not become distinctive through use; and (ii) appears to have not given due weight to the objective evidence provided by the applicant and therefore did not have good and adequate reasons for their finding in relation to this legal provision; infringement of Article 7(2) of Council Regulation 40/94 (which became Article 7(2) of Council Regulation 207/2009) as the Board of Appeal was wrong to apply the test for this legal provision, in relation to their findings for Article 7(3) of Council Regulation 40/94, to all Member States of the EU, instead of applying the relevant test only to Member States which are predominantly English speaking.

Action brought on 4 August 2009 — Fuller & Thaler Asset Management v OHIM (BEHAVIOURAL INDEXING)

(Case T-310/09)

(2009/C 244/22)

Language of the case: English

Parties

Applicant(s): Fuller & Thaler Asset Management, Inc. (San Mateo, United States) (represented by S. Malynicz, Barrister)

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

Form of order sought

- Annul the decision of the Grand Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 April 2009 in case R 323/2008-G; and